TEXAS REGISTER

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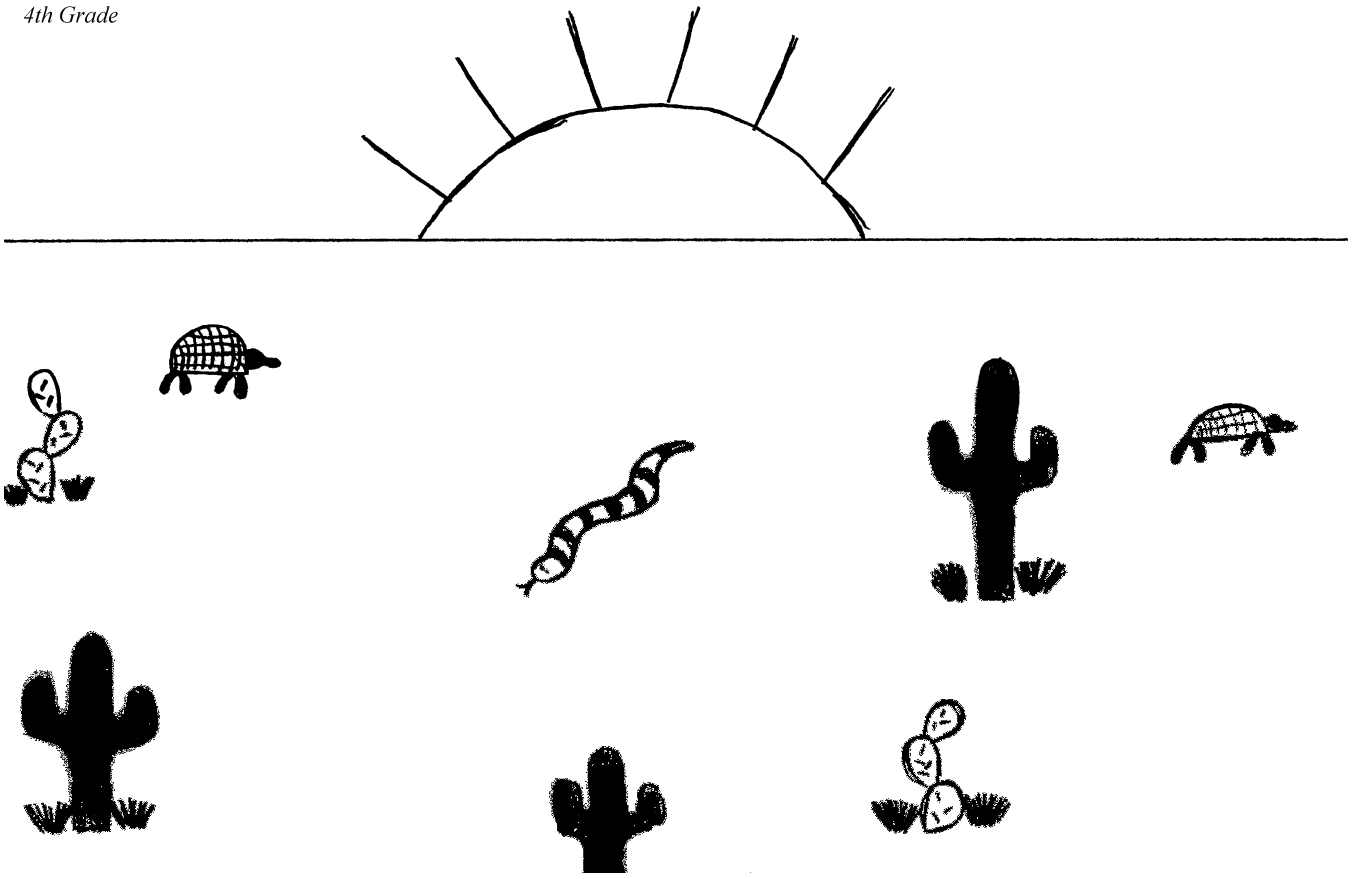
Steven Koehne
4th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinion

RQ-0653-GA

Requestor:

The Honorable Vicki Truitt

Chair, Committee on Pensions and Investments

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an educational institution may contract with a third-party administrator that is owned by or otherwise affiliated with a company that sells qualified investment products to the institution's employees (RQ-0653-GA)

Briefs requested by January 25, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200706509
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

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Opinions

Opinion No. GA-0585

The Honorable Armando R. Villalobos

Cameron County District Attorney

974 East Harrison Street

Brownsville, Texas 78520

Re: Whether article XI, section 11 of the Texas Constitution prevails over the Harlingen City Charter regarding the filling of vacancies on the city commission (RQ-0594-GA)

S U M M A R Y

Article XI, section 11(b) of the Texas Constitution requires a municipality that has lengthened its non-civil service officers' terms of office to fill a vacancy by majority vote of the qualified voters at a special election. This constitutional requirement prevails over an inconsistent city charter provision.

Opinion No. GA-0586

The Honorable Kevin Bailey

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a local civil service commission may adopt a rule that awards additional points to applicants on the basis of residency within the municipality (RQ-0599-GA)

S U M M A R Y

A local civil service commission may not adopt a rule that awards additional points to an applicant on the basis of residency within the municipality.

Opinion No. GA-0587

Mr. Buddy Garcia, Chair

Texas Commission on Environmental Quality

Post Office Box 13087

Austin, Texas 78711-3087

Re: What limitations, if any, the Legislature has imposed on the Texas Commission on Environmental Quality with regard to tax exemption and tax rollback relief for pollution control property (RQ-0635-GA)

S U M M A R Y

Neither section 11.31(k) nor section 26.045(f) of the Tax Code restricts the rule-making authority of the Texas Commission on Environmental Quality to only those pollution control facilities, devices, or methods associated with advanced clean energy projects.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200706571
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 21, 2007

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Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.3

The Texas Ethics Commission proposes an amendment to §8.3, relating to the subject of an advisory opinion.

The proposed amendment to §8.3 adds §2152.064 and §2155.003 of the Government Code to the list of laws from which the commission will issue an advisory opinion.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be fiscal implications for the state as a result of enforcing or administering the rule as proposed. The cost is undetermined as of this date. There will be no fiscal implications to local government and no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment to §8.3 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §8.3 affects §2152.064 and §2155.003 of the Government Code.

§8.3. Subject of an Advisory Opinion.

(a) The commission will issue a written advisory opinion on the following laws to a person qualified to make a request under §8.5 of this title (relating to Persons Eligible To Receive an Advisory Opinion):

(1) Government Code, Chapter 302 (concerning Speaker of the House of Representatives);

(2) Government Code, Chapter 303 (concerning Governor for a Day and Speaker's Reunion Day Ceremonies);

(3) Government Code, Chapter 305 (concerning Registration of Lobbyists);

(4) Government Code, Chapter 572 (concerning Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest);

(5) Government Code, Chapter 2004 (concerning Representation Before State Agencies);

(6) Local Government Code, Chapter 159, Subchapter C, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;

(7) Election Code, Title 15 (concerning Regulating Political Funds and Campaigns);

(8) Penal Code, Chapter 36 (concerning Bribery and Corrupt Influence);

(9) Penal Code, Chapter 39 (concerning Abuse of Office);

(10) Government Code, §2152.064 (concerning Conflict of Interest in Certain Transactions); and

(11) Government Code, §2155.003 (concerning Conflict of Interest).

(b) The commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission.

(c) An advisory opinion cannot resolve a disputed question of fact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706543
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.13, §20.29

The Texas Ethics Commission proposes the amendments to §20.13 and §20.29, relating to the reporting of information from out-of-state political committees.

Current §20.13(d) prompts a filer to look at §22.7 (Contribution from Out-Of-State Committee) for additional reporting requirements regarding the acceptance of a contribution from an out-of-state political committee. The proposed amendment prompts the filer to also look at §20.29 (Information About Out-of-State Committees), which contains additional reporting requirements regarding these types of contributions.

Current §20.29(c) provides that the timeliness of paper documents concerning out-of-state political committees is governed by the postmark rule of Election Code §251.007. The proposed amendment provides that the timeliness of these documents is governed by the filing deadline applicable to a report for which a document is filed. In other words, a document submitted concerning a pre-election report would be required to be received by the commission by the applicable deadline for that report. Effective September 1, 2007, a report due 30 days before an election and a report due 8 days before an election (including a runoff election) must be received by the filing authority no later than the report due date.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed amendments to §20.13 and §20.29 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §20.13 and §20.19 affects Chapter 254, Election Code.

§20.13. Out-of-State Committees.

(a) An out-of-state political committee is required to file reports for each reporting period under Subchapter F, Chapter 254, Election Code, in which the out-of-state political committee accepts political contributions or makes political expenditures in connection with a state or local election in Texas. Section 254.1581, Election Code, applies to a report required to be filed under this section. An out-of-state political committee that files reports electronically in another jurisdiction may comply with §254.1581, Election Code, by sending a letter to the commission within the time prescribed by that section specifying in detail where the electronic report may be found on the website of the agency with which the out-of-state political committee is required to file its reports. An out-of-state political committee that does not file reports electronically in another jurisdiction may comply with §254.1581, Election Code, by sending a copy of the cover sheets of the report and a copy of each page on which the committee reports a contribution or expenditure accepted or made in connection with a state or local election in Texas.

(b) An out-of-state political committee that files an appointment of campaign treasurer with a Texas filing authority is required to file reports under this title.

(c) A political committee must determine if it is an "out-of-state political committee" each time the political committee plans to make a political expenditure in Texas (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder). The determination is made as follows.

(1) Before making the expenditure (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder), the committee must calculate its total political expenditures made during the 12 months immediately preceding the date of the planned expenditure. This total does not include the planned political expenditure triggering the calculation requirement.

(2) If 80% or more of the total political expenditures are in connection with elections not voted on in Texas, the committee is an out-of-state committee.

(3) If less than 80% of the total political expenditures are in connection with elections not voted on in Texas, the committee is no longer an out-of-state committee.

(d) Section 20.29 (relating to Information About Out-of-State Committees) and §22.7 [~~Section 22.7 of this title~~] (relating to Contribution from Out-of-State Committee) of this title contain [~~contains~~] other provisions regarding requirements applicable to recipients of contributions from out-of-state political committees.

(e) An out-of-state political committee planning an expenditure in connection with a campaign for federal office voted on in Texas is not required to make the determination required under subsection (c) of this section. However, an expenditure in connection with a campaign for federal office voted on in Texas must be included in the calculation set out in subsection (c) of this section for an out-of-state committee making an expenditure in connection with a non-federal campaign voted on in Texas.

§20.29. Information About Out-of-State Committees.

(a) A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-

state political committee required to file its statement of organization with the Federal Election Commission shall either:

(1) enter the out-of-state committee's federal PAC identification number in the appropriate place on the report; or

(2) timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission.

(b) A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee that is not required to file its statement of organization with the Federal Elections Commission shall either:

(1) enter the information required by §253.032(a)(1) or (e)(1), Election Code, as applicable, on the report filed by electronic transfer; or

(2) timely file a paper copy of the information required by §253.032(a)(1) or (e)(1), Election Code, as applicable.

(c) Except as provided by subsection (d) of this section, §251.007, [~~Section 251.007,~~] Election Code, applies to a document filed under subsection (a)(2) or (b)(2) of this section.

(d) A document filed under subsection (a)(2) or (b)(2) of this section for a pre-election report is timely filed if it is received by the commission no later than the report due date. A pre-election report includes reports due 30-days and 8-days before an election, reports due before a runoff election, and special reports due before an election.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706492
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §20.220

The Texas Ethics Commission proposes new §20.220, relating to additional disclosure requirements for the Texas Comptroller of Public Accounts.

The proposed new §20.220 addresses the requirement in House Bill 3560, 80th Legislature, that the Texas Comptroller of Public Accounts disclose to the Texas Ethics Commission a contribution from a vendor.

The new §20.220 is proposed to address §2155.003(e) of the Government Code requiring the Texas Comptroller of Public Accounts (comptroller) to report to the Texas Ethics Commission a campaign contribution from a vendor that bids on or receives a contract under the comptroller's purchasing authority. Subsection (a) of the rule defines the term "vendor."

Subsection (b) provides that the comptroller, or specific-purpose committee created to support the comptroller, is required to disclose campaign contributions of $500 or more from a vendor during the reporting period or from a political committee directly established, administered or controlled by a vendor during the reporting period. The comptroller or specific-purpose committee created to support the comptroller, must also report certain other required information.

Subsection (c) provides a "best efforts" defense to the comptroller, or specific-purpose committee created to support the comptroller, providing that the comptroller or specific-purpose committee request the information required by subsection (b) in writing, or if not in writing, orally with certain additional requirements.

Subsection (d) provides that the comptroller, or specific-purpose committee created to support the comptroller, report certain additional information that is not provided by the person making the political contribution and that is in the comptroller's or committee's records or previous reports filed by the comptroller or committee.

Subsection (e) provides that the comptroller, or specific-purpose committee created to support the comptroller, report certain additional information received after the filing deadline on the next required report.

Subsection (f) provides that the disclosure under subsection (b) applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be fiscal implications for the state as a result of enforcing or administering the rule as proposed. The cost is undetermined as of this date. There will be no fiscal implications to local government and no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §20.220 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §20.220 affects §2155.003 of the Government Code.

§20.220. Additional Disclosure for the Texas Comptroller of Public Accounts.

(a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed $500 during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12 month period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed $500 during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12 month period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if :

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous reports filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706542
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-5800

CHAPTER 45. CONFLICTS OF INTEREST

1 TAC §§45.1, 45.3, 45.5, 45.7, 45.9

The Texas Ethics Commission proposes new §§45.1, 45.3, 45.5, 45.7, and 45.9, relating to the conflicts of interest requirements for the chief clerk or any other employee of the Texas Comptroller of Public Accounts and a Texas Facilities Commission member, employee, or appointee.

House Bill 3560, 80th Legislature, transfers to the Texas Comptroller of Public Accounts duties of the Texas Building and Procurement Commission that do not primarily concern state facilities and renames the commission the Texas Facilities Commission.

The proposed new rules under Chapter 45 (Conflicts of Interest) are added to address the conflict of interest portions of §2155.003 and §2152.064 of the Government Code. The new §45.1 is added to state that Chapter 45 applies to §2155.003 and §2152.064 of the Government Code. The new §45.3 is added to define relevant terms used in the conflict of interest provisions of §2155.003 of the Government Code at issue that relate to the comptroller. The new §45.5 is added to define relevant terms used in the conflict of interest provisions of §2152.064 of the Government Code at issue that relate to the Texas Facilities Commission.

The new §45.7 is added for guidance on the issue of rebates as applied to the conflict of interest provisions of §2155.003 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when the chief clerk or employee of the comptroller is not prohibited from accepting a rebate.

The new §45.9 is added for guidance on the issue of rebates as applied to the provisions of §2152.064 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when an employee, appointee, or commission member of the Texas Facilities Commission is not prohibited from accepting a rebate.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect, there will be fiscal implications for the state as a result of enforcing or

administering the rules as proposed. The cost is undetermined as of this date. There will be no fiscal implications to local government and no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §§45.1, 45.3, 45.5, 45.7, and 45.9 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §§45.1, 45.3, 45.5, 45.7, and 45.9 affects §2152.064 and §2155.003 of the Government Code.

§45.1. Application.

This chapter applies to §2152.064 and §2155.003 of the Government Code.

§45.3. Definitions.

(a) Section 2155.003 of the Government Code applies to:

(1) the chief clerk; and

(2) an employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under the comptroller's purchasing authority.

(b) Under §2155.003 of the Government Code the following words and terms shall have the following meanings:

(1) "Chief clerk" and "employee" includes the spouse or dependent child of the chief clerk or employee.

(2) "Have an interest in" or "in any manner be connected with," is limited to the purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code, and means a right, share, equitable or legal claim to, or pecuniary interest in, a contract or bid but does not include ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

(3) "Value," "reward," and "compensation" includes anything with a monetary value of $5 or more.

§45.5. Definitions.

(a) Section 2152.064 of the Government Code applies to:

(1) a commission member and appointee; and

(2) to an employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under §2152.064 of the Government Code, or in connection with state surplus or salvage property.

(b) Under §2152.064 of the Government Code the following words and terms shall have the following meanings:

(1) "Commission member," "appointee," and "employee" includes the spouse or dependent child of a commission member, appointee, or employee.

(2) "Have an interest in" or "in any manner be connected with," means a right, share, equitable or legal claim to, or pecuniary interest in, a contract or bid, or a recipient of state surplus or salvage property under control of the commission, but does not include ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

(3) "Value," "reward," and "compensation" includes anything with a monetary value of $5 or more.

§45.7. Rebates.

(a) The term "rebate" includes a discount, return, or refund of money.

(b) The chief clerk or an employee of the comptroller is not prohibited from accepting a rebate that is offered or given on the same terms to all state employees or to the general public.

§45.9. Rebates.

(a) The term "rebate" includes a discount, return, or refund of money.

(b) An employee, appointee, or commission member of the Texas Facilities Commission is not prohibited from accepting a rebate that is offered or given on the same terms to all state employees or to the general public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706572
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-5800

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 57. RENTAL-PURCHASE ACT COMPLIANCE

1 TAC §57.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of

the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Attorney General ("OAG") proposes the repeal of 1 TAC Chapter 57, §57.1, concerning Rental-Purchase Act Compliance.

The OAG published Notice of Intent to conduct a Rule Review of Chapter 57 in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564). The review assessed whether the reasons for adopting the rule continue to exist and no public comments were received. As a result of the review, this rule is now proposed for repeal because the OAG has determined that the reasons for adopting the rule no longer exist.

Chapter 57 is comprised of §57.1 and merely provides notice that a form rental-purchase agreement is available from the Division Chief of the OAG's Consumer Protection Division at the OAG's Austin address. Although Texas Business and Commerce Code §35.72(b) continues to require the OAG to provide a form agreement that may be used to satisfy the requirements of Texas Business and Commerce Code §§35.71 - 35.74 (the Rental-Purchase Act), there is no statutory requirement for the OAG to adopt or maintain administrative rules relating to the availability of the form agreement.

An approved form rental-purchase agreement that may be used to satisfy the requirements of the Rental-Purchase Act will continue to be available from the Division Chief of the OAG's Consumer Protection Division at 300 W. 15th Street, Austin, Texas 78701. The form agreement will also be available to the public in a downloadable format on the agency web site at http://www.oag.state.tx.us/consumer/consumer.shtml.

Paul Carmona, Division Chief of the OAG's Consumer Protection Division, has determined that for each year of the first five years following the repeal of Chapter 57, there will be no foreseeable fiscal implications for state government or for local government as a result of the repeal.

Mr. Carmona has also determined that during the first five-year period following the repeal of Chapter 57, the public will benefit from increased efficiency of government and agency operations as the result of repealing this administrative rule from the Texas Administrative Code. Making the form agreement available on the OAG's web site is an adequate, logical and readily accessible means of providing the form agreement to persons required to comply with the requirements of the Rental-Purchase Act. Further, he has determined that for each year of the first five years following the repeal of Chapter 57, there will be no economic cost to persons required to comply with the requirements of the Rental-Purchase Act. Finally, Mr. Carmona has determined that the repeal of Chapter 57 will have no adverse effect on small business or micro-business or local employment.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Paul Carmona, Division Chief, Consumer Protection Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2185 or by e-mail to paul.carmona@oag.state.tx.us.

The repeal is proposed because the reasons for adopting Chapter 57 no longer exist, the OAG is both authorized and required by Government Code §2001.039(c) to repeal the rule.

No other codes, statutes, or articles are affected by this proposal.

§57.1. Rental Purchase Form Agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706508
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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CHAPTER 58. PHYSICIAN JOINT NEGOTIATION

The Office of the Attorney General ("OAG") proposes the repeal of 1 TAC Chapter 58, Subchapter A, §§58.1 - 58.6; Subchapter B, §§58.11 - 58.15; Subchapter C, §§58.21 - 58.26; Subchapter D, §§58.31 - 58.33; Subchapter E, §58.41 and §58.42; and Subchapter F, §§58.51 - 58.53; concerning Physician Joint Negotiation.

The OAG published Notice of Intent to conduct a Rule Review of Chapter 58 in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564). The review assessed whether the reasons for adopting the rules continue to exist. No comments were received during the review. As a result of this review, Chapter 58 is now proposed for repeal because the OAG has determined that the reasons for adopting the rules no longer exist.

The Chapter 58 rules, under which competing physicians could jointly negotiate contracts with health benefit plans, were adopted by the OAG pursuant to authority granted under the prior provisions of the Insurance Code, Articles 29.11 and 29.13. Chapter 29 of the Insurance Code expired by its own terms on September 1, 2007 pursuant to the former Article 29.14; therefore, Chapter 58 is being repealed.

Mark Tobey, Division Chief of the OAG's Antitrust and Civil Medicaid Fraud Division, has determined that, during the first five-year period following the proposed repeal of Chapter 58, there will be no fiscal implications for state government or for local government as a result of the adopted repeal.

Mr. Tobey has also determined that, during the first five-year period following the proposed repeal of Chapter 58, the public will benefit from the increased efficiency of government and agency operations because agency resources will no longer be required to support the physician joint negotiations formerly contemplated by the expired provisions of the Insurance Code. Further, he has determined that, for each of the first five years following the repeal of Chapter 58, there will be no economic cost to persons formerly required to comply with the provisions of the former rules. Finally, Mr. Tobey has determined that the repeal of Chapter 58 will have no adverse effect on small business or micro-business or local employment.

Written comments on the proposal may be submitted for 30 days following the publication of this notice in the *Texas Register* to Mark Tobey, Division Chief, Antitrust & Civil Medicaid Fraud Division, Office of the Attorney General, P.O. Box 12548,

Austin, Texas 78711-2548, (512) 463-1262, or by e-mail at mark.tobey@oag.state.tx.us.

SUBCHAPTER A. GENERAL

1 TAC §§58.1 - 58.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code §2001.039(c) to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.1. Purpose and Scope.

§58.2. Effect of Rules.

§58.3. Definitions.

§58.4. Fees.

§58.5. Public Disclosure and Use of Submitted Information.

§58.6. Podiatric Physicians.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706518
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER B. APPLICATION REQUIREMENTS

1 TAC §§58.11 - 58.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code, §2001.039(c) to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.11. Applications.

§58.12. Contents of Application.

§58.13. Fee-Related Negotiations.

§58.14. Attestations.

§58.15. Requests for Additional Information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706519
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER C. REVIEW OF APPLICATION

1 TAC §§58.21 - 58.26

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code, §2001.039(c), to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.21. Complete Filing.

§58.22. Meetings With Staff.

§58.23. Full Disclosure.

§58.24. Attorney General's Investigation.

§58.25. Withdrawal of Application.

§58.26. Written Authorization Required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706520
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER D. REVIEW OF PROPOSED CONTRACTS

1 TAC §§58.31 - 58.33

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code, §2001.039(c), to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.31. Filing Requirements for Proposed Contracts.

§58.32. Contents of Filing for Proposed Contracts.

§58.33. Written Authorization Required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706521
Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER E. REMEDIAL MEASURES

1 TAC §58.41, §58.42

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code, §2001.039(c), to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.41. Time for Re-Submission.

§58.42. Review of Remedial Actions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706522
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER F. SUBSEQUENT NEGOTIATIONS AND CONTRACT MODIFICATIONS

1 TAC §§58.51 - 58.53

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed because the reasons for adopting Chapter 58 no longer exist, the OAG is both authorized and required by Government Code, §2001.039(c), to repeal the rules in their entirety.

No other codes, statutes, or rules are affected by this proposal.

§58.51. Resuming Joint Negotiations After a Failed Negotiation.

§58.52. Joint Negotiations to Modify an Approved Contract.

§58.53. Review of Contracts Negotiated Under This Subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 3, 2008
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §81.177

The Office of the Secretary of State, Elections Division, proposes new §81.177, concerning the process to approve and issue a voter registration certificate to a voter applicant whose Texas driver's license number or personal identification number as issued by the Texas Department of Public Safety or whose federal Social Security number cannot be verified by the Office of the Secretary of State. The federal Help America Vote Act of 2002, 42 U.S.C. §15301, requires that the state verify the driver's license number or last four digits of the social security number provided by all voter registration applicants who apply to register to vote beginning January 1, 2006. State law adopted this federal requirement in §13.072 of the Texas Election Code. However, federal and state law do not directly address the process to be followed when one of the above identification numbers cannot be verified by the state. Section 81.177 would clarify the procedures to follow in this situation and would ensure a single, uniform practice across the state.

Proposed new §81.177 would require that a voter registration applicant, whose identifying numbers could not be verified by the Office of the Secretary of State, would be approved for voter registration and issued a voter registration certificate number by

the state. Voters in this category would be identified as having to provide a permissible form of identification when they presented themselves to vote in person or by mail. The official list of registered voters would need to be annotated with the names of voters who would be required to provide identification. In addition, voters who indicated on the voter registration application that they do not have the requested identifying numbers, would also be approved for voter registration, but would similarly be required to provide identification when they presented themselves for voting in person or by mail.

Proposed new §81.177 is necessary to ensure uniform processing of voter registration applications throughout the state.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the adoption is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the adoption.

Ms. McGeehan has also determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be to provide a single, uniform practice for handling voters whose identifications cannot be verified or voters who do not have certain identification. There will be no effect on small businesses.

Written comments on the proposed new rule may be submitted to Ann McGeehan, Director of Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Before adopting the rule, the Secretary of State will consider all comments received before 12:00 noon, Monday, February 4, 2008.

The new rule is proposed under the Texas Election Code, §31.003 and §31.010, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and to implement the federal Help America Vote Act.

The rule affects no other code.

§81.177. Registration Procedure for Voters Who Fail to Provide Required Identification Numbers.

(a) The voter registrar shall approve the application of an applicant who otherwise meets the qualifications for registration but states on the application that the applicant has not been issued an identification number described by Texas Election Code §13.002(c)(8). The registrar shall mark the list of registered voters with an annotation indicating that the voter whose application is approved under this subsection must provide a document or a copy of a document described by Texas Election Code, §63.0101 the first time the voter seeks to vote by appearing for voting in person or applying for a ballot to be voted by mail.

(b) If the secretary of state is unable to verify the applicant's Texas driver's license number, the number of a personal identification card issued to the applicant by the Department of Public Safety, or the last four digits of the applicant's social security number, the voter registrar shall approve the application and mark the list of registered voters with an annotation indicating that the voter whose application is approved under this subsection must provide a document or a copy of a document described by Texas Election Code §63.0101 the first time the voter seeks to vote. The identification number provided on the voter's application is retained with the voter's record.

(c) Each original and supplemental list of registered voters must identify each voter, who failed to provide an identification number described by Texas Election Code §13.002(c)(8) and whose identification number was not able to be verified by the secretary of state, with an annotation indicating that the voter must provide a document or a copy of a document described by Texas Election Code §63.0101 the first time the voter seeks to vote in person or by mail.

(d) The voter registrar shall remove the identification notation from the voter's record after the voter has voted the first time and provided the appropriate identification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706550
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-5650

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.23, concerning adoption by reference of the 2008 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2007 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072 of the Texas Government Code.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section as proposed.

Mr. Gerber has also determined that for each year of the first five years the rule is in effect the public benefit anticipated will be improved communication with the public regarding the Department's programs and activities. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new section as proposed.

The full text of the 2008 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2008 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

The public comment period will be between January 4 and February 6, 2008, and a public hearing will be held on January 8,

2008, at 10:00 a.m. in the Rusk Building, 208 East 10th Street in Austin. Written comments may be submitted to Texas Department of Housing and Community Affairs, Brenda Hull, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: brenda.hull@tdhca.state.tx.us, or by fax to (512) 469-9606.

The TDHCA Board of Directors will approve the final 2008 SLIHP at the March 2008 board meeting. The 2008 SLIHP will become effective 20 days after being filed in the Office of the Secretary of State.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed new section.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the Department) adopts by reference the 2008 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2008 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2008 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706576
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-3916

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.10

The Texas Residential Construction Commission ("commission") proposes new §300.10, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code. The commission proposes the placement of this section in Chapter 300 of the commission rules rather than in Chapter 301, where the definitions rule currently resides, as a part of the agency's consolidation and review of its rules under Government Code §2001.039.

The commission is proposing these definitions to assist those who use the commission's rules by providing terminology that will enable users to better understand and use the rules adopted.

The newly proposed section includes language that was previously adopted in §301.1 of this title and adds new language to implement new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective September 1, 2007, 80th Legislature, Regular Session), which includes changes to Title 16, Property Code.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period that the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect the public will benefit from having more complete and clearer definitions.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect there will be no significant effect on individuals or large, small, or micro-businesses as a result of the adoption of the new section

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect there will be no adverse economic effect on small businesses. Therefore, no regulatory flexibility analysis is necessary.

Interested persons may submit written comments (12 copies) on the proposed section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78701-3509. The deadline for submission of comments is 30 days from the date of publication of the proposed section in the *Texas Register*. Comments received after that date will not be considered. Comments should be arranged in the manner consistent with the organization of the new section. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Definitions" in the subject line. Comments submitted electronically that are sent to a different address or that do not have "Definitions" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; and Government Code §2001.039, which requires agency's to periodically review their rules for continued necessity.

No other statutes, articles, or codes are affected by the proposed section.

§300.10. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that indicates there may be a construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--any person who, for a fixed price, commission, fee, wage, or other compensation, sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervision or management of the construction of:

(A) a new home;

(B) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(C) an improvement to the interior of an existing home when the cost of the work exceeds $10,000.

(D) When the rule context requires, the term includes

(i) an owner, officer, director, shareholder, partner, affiliate, subsidiary, or employee of the builder;

(ii) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(iii) a third party warranty company and its administrator.

(E) The term does not include any person who:

(i) has been issued a license by this state or an agency of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued; or

(ii) sells a new home and:

(I) does not construct or supervise or manage the construction of the home; and

(II) holds a license issued under Chapter 1101, Occupations Code, or is exempt from that chapter under §1101.005, Occupations Code; or

(iii) a homeowner or to a homeowner's real estate broker, agent, interior designer registered under Chapter 1053, Occupations Code, interior decorator, or property manager who supervises or arranges for the construction of an improvement to a home owned by the homeowner.

(F) The term does not include a nonprofit business entity that is exempt from taxation under §501(c)(3), Internal Revenue Code, if:

(i) the construction or supervision or management of the construction of the home, material improvement, or improvement sold by the nonprofit business entity is performed by a builder registered under this title;

(ii) the builder contractually agrees to comply with the provisions of this title;

(iii) the builder is contractually liable to the homeowner for the warranties and building and performance standards of this title; and

(iv) the nonprofit business entity does not participate directly in the construction of the home, material improvement, or improvement.

(5) Builder in good standing--a builder or remodeler that has a current active certificate of registration issued by the commission and that has no unpaid fees or administrative penalties due and owing to the commission.

(6) Commencement of construction-when goods, materials, or equipment has been delivered to the job site for use in the construction of a new home, or a material improvement or an interior improvement to an existing home.

(7) Commission--the Texas Residential Construction Commission, including commission staff when performing the functions of their employment in furtherance of the commission's mission and purpose.

(8) Complaint--a written expression of concern about a registered builder or remodeler's registration status, construction practices or business practices. A complaint does not include a request submitted under Property Code §428.001.

(9) Construction Activities--an action taken or a failure to act by the builder/remodeler, or its employees, agents, contractors or subcontractors, during the process of building a home, or a material improvement or an interior improvement to an existing home.

(10) Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period caused by the action or inaction of the builder, or its employees, agents, contractors or subcontractors; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(11) Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(12) Duplex--a single residential structure with two separate dwelling units.

(13) Dwelling unit--a residential structure providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(14) Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(15) Home--the real property, improvements and appurtenances thereto for a single-family dwelling unit or duplex that is not subject to a condominium regime.

(16) ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(17) Improvement to the interior of an existing home when the cost of the work exceeds $10,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $10,000 to be paid by a homeowner to a single builder or remodeler that involves the coordination of trades or multiple subcontractors or the work involves structural components or the penetration of the home's diaphragm. The definition specifically excludes improvements designed primarily to replace a single component part, such as the replacement of one type of floor covering with another, or to make similar cosmetic changes to interior surfaces, such as replacing laminate countertops with tile.

(18) Living space--the enclosed area in a home that is heated or air-conditioned so that it is suitable for year-round residential use.

(19) Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(20) Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement includes modifications to an existing home that requires the addition of new structural components or the modification of the home's existing structural components, but does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(21) One or two family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation, which is not used as a commercial structure.

(22) Person--an individual, political subdivision, partnership, company, corporation, association, or any other legal entity, however organized.

(23) Remodeler--a person who is a builder under the definition thereof in this section and who enters into an agreement with a homeowner to make material improvements to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $10,000.

(24) State Inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process through the assignment of third-party inspectors.

(25) Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the minimum number of years required pursuant to rules adopted by the commission, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air conditioning delivery systems;

(C) ten years for major structural components of the home; and

(D) ten years for the warranty of habitability.

(26) Structural failure--for purposes of Property Code §429.001(b) only, the term means non-compliance with the commission-adopted performance standards for major structural components, if applicable to the construction. For purposes of Property Code §429.001(b), if the commission-adopted performance standards do not apply, the term means non-compliance with any applicable written performance standard agreed to between the parties for structural components of a home, or if there are no written performance standards, the term means non-compliance with the usual and customary standards for construction of a structural component of the home such that the structural integrity of the home is compromised or the integrity and performance of the affected structural system is compromised.

(27) Substantial Completion--the later of:

(A) the stage of construction when a new home, addition, improvement, or alteration to an existing home is sufficiently complete that the home, addition, improvement or alteration can be occupied or used for its intended purpose; or

(B) if required, the issuance of a final certificate of inspection or occupancy by the applicable governmental authority.

(28) Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(29) Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress, that is not subject to a condominium regime.

(30) Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds $10,000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 17, 2007.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Residential Construction Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Residential Construction Commission ("commission") republishes its proposal to repeal 10 TAC §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code. The repeal is proposed

pursuant to an overall scheme to consolidate agency administrative rules into a single chapter under the agency's rule review plan. The agency is currently reviewing its rules pursuant to the requirements of Government Code §2001.39. The definitions currently contained in 10 TAC §301.1 will be proposed for adoption with any necessary amendments to the text resulting from recent legislation simultaneously in this issue of the *Texas Register*. The proposed repeal was previously published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 3927). No comments have been received on the proposal as previously published.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed repeal is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the proposed repeal is in effect the public will benefit from the overall rule reorganization that will place all of the agency administrative rules in the same chapter. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Ms. Durso has also determined that for each year of the first five-year period the proposed repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that the repeal of this section will not have any adverse economic impact on small businesses; therefore, no regulatory flexibility analysis is necessary.

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Ste. 200, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "301.1 repeal" in the subject line. The deadline for submission of comments is fourteen (14) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the section under consideration. Comments not timely received or that are submitted electronically but do not have "301.1 repeal" in the subject line may not be considered.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Government Code §2001.30, which requires state agencies to periodically review their rules to determine whether there is a continued need for their existence.

No other statutes, articles, or codes are affected by the proposal.

§301.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2007.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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CHAPTER 303. REGISTRATION
SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §303.212

The Texas Residential Construction Commission proposes new 10 Texas Administrative Code §303.212, Third-party Inspector Civil Liability. The new rule is needed to implement a new provision, Property Code §427.003, which was added to the Act by the 80th Texas Legislature in House Bill 1038. The change reduces the impact of liability and the cost of personal liability insurance, which third-party inspectors may purchase to protect themselves regarding work performed in their professional capacity. The new statute states that third-party inspectors and state inspectors will be afforded protection from liability for damages in civil actions for acts or omissions in the scope of duties as an inspector in the state-sponsored inspection process. Third-party inspectors do not enjoy protection from liability from damages if the inspector acts with wanton and willful disregard for the rights, safety, or property of another. Similarly, the third-party inspectors do not enjoy protection from liability from damages resulting from an intentional act of misconduct or gross negligence. Proposed new §303.212 implements this statutory change.

Proposed new §303.212 also requires that a third-party inspector who is sued directly, i.e., who is named individually as a defendant in a civil action, notify the commission in writing within ten days of being served. The proposed new subsection will allow the commission an opportunity to track how often the third-party inspectors are sued in civil lawsuits in the course of performing their duties on behalf of the commission. This information may aid the commission's determination whether a third-party inspector should be assigned responsibility for inspections to be performed pursuant to the State-sponsored Inspection and Dispute Resolution Process (SIRP), or whether the assignment of SIRP inspections to an inspector should be deferred while the lawsuit or proceeding is pending.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period that the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect the public and the industry will benefit from the commission knowing whether a third-party inspector may be involved in or subject to potential liability arising from a pending lawsuit.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect there will be no negative effect on individuals or large, small, and micro-businesses as a result of the express protection afforded to third-party inspectors under the new rule.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect there should

be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Ms. Durso has also determined that for each year of the first five year period the proposed section is in effect there will be no adverse economic effect on small businesses. Therefore, no regulatory flexibility analysis is necessary.

Interested persons may submit written comments on the proposed new rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas, 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "inspector civil liability" with the rule number in the subject line. Comments should be organized in a manner consistent with the organization of the proposed new rule. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that deadline submission date or comments submitted electronically without "inspector civil liability" in the subject line may not be considered.

The commission proposes the new rule under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; under Property Code §427.003, as promulgated by House Bill 1038; and under Government Code §§2001.021-2001.039, especially §2001.39, which requires state agencies to periodically review their rules.

No other statutes, articles, or codes are affected by the proposal.

§303.212. Inspector Civil Liability.

(a) A person who serves the commission as a third-party inspector or a state inspector is not liable for civil damages during the performance of his duties, unless acting with wanton and willful disregard for the rights, safety, or property of another. This subsection does not apply to an intentional act of misconduct or gross negligence.

(b) A third-party inspector who has been sued as a named defendant or third-party defendant in a civil lawsuit shall provide the commission written notice within ten days after being served. The notice will provide the name of the third-party inspector, the name of the docketed proceeding, the docket number, the parties to the suit, and the name of the court where the proceedings are to be held. The written notice will be sent to the commission by mail or facsimile. This subsection does not apply to an inspector serving as a third-party witness.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
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Texas Residential Construction Commission
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CHAPTER 307. INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §§307.1 - 307.7

The Texas Residential Construction Commission (commission) proposes new Chapter 307, §§307.1 - 307.7, regarding the inspections of new residential construction in areas not subject to municipal inspections. The proposed new chapter implements new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective Sept. 1, 2007, 80th Leg., Regular Session), which includes changes to Title 16, Property Code. The chapter provides criteria for the inspection of homes which heretofore were not subject to the inspection codes of a municipality. The requirements of this chapter will result in homes that are in greater compliance with the accepted residential building standards, safer, and with fewer construction defects.

The commission will develop an online system for reporting inspection results. The commission will develop a numbering system with a 24 character alpha-numeric identifier that allows builders and remodelers to assign project numbers that can be utilized by fee inspectors to report inspection results. At the time of home registration by the builder, the builder/remodeler will report the project number it assigned to the project so that inspection results and project registration can be associated. If a home registration for a project subject to inspection under this chapter is not associated with inspection results already reported, the builder/remodeler will be given an opportunity to correct any reporting errors before a completion certificate is forwarded to the homeowner.

Ms. Susan Durso, General Counsel for the commission, has determined that, for each year of the first five-year period that the proposed new chapter is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the section.

Ms. Durso has also determined that, for the first five years the new chapter is in effect, the public will benefit from having residences built to the current codes and standards of the state. There is no anticipated economic cost to small businesses or persons who are required to comply with the proposed new chapter.

Ms. Durso has also determined that, for each year of the first five-year period the proposed new chapter is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that, for each year of the first five-year period the proposed new chapter is in effect, there may be an adverse economic effect on small businesses that build in areas not subject to municipal inspection. However, the requirement that a builder or remodeler in those areas obtain interim construction inspections is required by statute; therefore, no regulatory alternative is available. Accordingly, no regulatory flexibility analysis is necessary.

Comments on the proposed new chapter may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Chapter 307" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rule in the *Texas*

Register. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments submitted after the deadline for submittal, submitted to a different address, or submitted electronically without "Chapter 307" in the subject line, may not be accepted.

The new chapter is proposed pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and Property Code, Chapter 446, which requires that certain new residential construction projects be subject to inspection.

No other statutes, articles, or codes are affected by the proposed new chapter.

§307.1. Code Compliance Inspections Required.

(a) A builder or remodeler who enters into an agreement with a homeowner for a transaction governed by the Act and a home located in a geographic area of the state that is not subject to municipal inspection must hire a qualified fee inspector to inspect the construction for applicable code compliance as required by this chapter.

(b) A builder may use the same or a different fee inspector for the inspections required under this chapter.

(c) For new home construction subject to the inspection requirements of this chapter, a fee inspector shall conduct inspections of the construction project for compliance with the applicable codes at the following stages of construction:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(d) For improvements to an existing home, a fee inspector shall conduct inspections for code compliance, as applicable, at the following stages of construction if included in the scope of the construction project:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(e) When conducting inspections under this chapter, fee inspectors will utilize forms promulgated by the commission to record their findings and conclude whether the construction is code compliant.

§307.2. Windstorm Insurance Compliance Inspections.

For residential construction in an unincorporated area in which windstorm coverage is available under Chapter 2210, Insurance Code, a builder or remodeler must obtain a certificate of compliance for the structure in the manner provided under §2210.251, Insurance Code, pursuant to the Texas Department of Insurance regulations.

§307.3. Qualified Fee Inspectors.

(a) To serve as a fee inspector under this chapter, an individual must be one of the following:

(1) a professional engineer licensed by the Texas Board of Engineering;

(2) an architect registered with the Texas Board of Architectural Examiners;

(3) a professional inspector licensed by the Texas Real Estate Commission; or

(4) a third-party inspector registered with the commission under Chapter 303, Subchapter C of this title.

(b) The license or registration issued by one of the state governmental bodies listed in subsection (a) of this section must be in an active status of good standing with the issuing body at the time of hire, for the individual to be eligible to serve as a fee inspector under this chapter.

§307.4. Reporting.

(a) The commission will create a unique project numbering system utilizing a builder's registration number for builders and remodelers to assign to each new residential construction project that is subject to the inspection requirements of this chapter. The commission will use the unique project number to track the inspections reported on each project.

(b) A fee inspector who conducts an inspection pursuant to §307.1 of this chapter will:

(1) obtain a unique password from the commission in order to report the satisfactory completion of each inspection performed pursuant to this chapter to the commission; and

(2) report the completion of the inspection using the assigned project number provided by the builder or remodeler via a commission-provided secure Web portal;

(c) Individual fee inspectors who are unable to submit inspection results via the commission's secure Web portal may submit a written request for a waiver. The commission will provide an alternate method for reporting inspection information.

(d) When registering a home subject to the inspection requirements of this chapter, a builder or remodeler will provide the unique project number it assigned to the property and provided to the fee inspector and, if required to obtain a certificate of compliance under §307.2 of this chapter, will report the WI-8 certificate number at the time the home is registered.

§307.5. Certificate of Completion.

(a) Within 30 days following the registration of a home subject to the inspection provisions of this chapter, the commission shall issue a certificate of completion to the homeowner and the builder, if the inspection reports have been timely received.

(b) If the required inspection reports have not been received within 30 days following the registration of a home subject to the inspection provisions of this chapter, the commission will issue a letter notifying the builder and homeowner that the registration was received but that the commission records do not show compliance with the statutory inspection requirements for code compliance.

§307.6. Compliance Audits.

(a) At least annually the commission will conduct random compliance audits of home registration records for residential construction projects subject to this chapter.

(b) A builder or remodeler will maintain inspection records showing proof of compliance with the inspection requirements of this chapter for a period of five years following home registration under Chapter 303, Subchapter B of this title.

§307.7. Failure to Comply with Inspection Requirements.

A builder or remodeler who fails to comply with the inspection requirements of this chapter will be subject to disciplinary action pursuant to the provisions of Chapter 305 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.1 - 313.7, 313.11, 313.13, 313.15 - 313.18, 313.20, 313.21, 313.26

The Texas Residential Construction Commission (commission) proposes amendments to 10 Texas Administrative Code (TAC) §§313.1 - 313.7, 313.11, 313.13, 313.15 - 313.18, 313.20, 313.21, and 313.26 regarding the State-sponsored Inspection and Dispute Resolution Process (SIRP). The proposed amendments implement changes to Property Code §§401.003, 418.001, 426.001, 426.004 - 426.007, 428.001, 428.003, 428.004, and 429.001 that were enacted by the 80th Texas Legislature in House Bill (H.B.) 1038.

Amendments to §313.1. Purpose.

The commission proposes amendments to §313.1, *Purpose,* in order to more accurately describe the information provided by the commission to members of the public who make inquiries about the SIRP process. The proposed modification is consistent with Texas Property Code, §428.001(f).

Amendments to §313.2. Prerequisite to State-sponsored Inspection and Dispute Resolution Process (SIRP).

The commission proposes amendments to §313.2, *Prerequisite to State-sponsored Inspection and Dispute Resolution Process (SIRP),* necessary for consistency with amendments to Texas Property Code, §418.001 and §426.005 resulting from H.B. 1038.

Amendments to §313.3. Notice of Defect Alleging Threat to Health or Safety.

The commission proposes amendments to §313.3, *Notice of Defect Alleging Threat to Health or Safety,* to clarify when a builder fails to cure in a reasonable time a defect that threatens health or safety and the homeowner chooses to repair the defect. However, once defects have been repaired, they are no longer defective; therefore, a third-party inspector can no longer inspect the defect alleged to have previously existed or make a recommendation for repair and the commission does not have authority to order the payment of damages for expenses incurred by a homeowner who makes repairs in this circumstance.

Amendments to §313.4. Timely Filing a Request to Initiate the SIRP.

The commission proposes amendments to §313.4 regarding timely filing a request to initiate the SIRP necessary to implement H.B. 1038 changes to Property Code, §426.001, which delineate the disputes between homeowners and builders to which the Act applies, and to Property Code, §426.006, which establishes new warranty deadlines. The proposed amendments describe the timeframes within which a person must file a timely request for state inspection.

House Bill 1038 modified the two deadlines in Property Code, §426.001 and §426.006 for filing a request with the commission to initiate a SIRP and added a third deadline to Property Code, §426.006, for requesting a SIRP for defects that are not reasonably discoverable within the applicable warranty period.

The first deadline is set forth in Property Code, §426.001(a). Previously, Property Code, §426.001(a) provided that a SIRP request must be submitted to the commission on or before the tenth anniversary of either the date of the initial transfer of title from the builder to the initial owner of the home or improvement or, if there is no closing, the date on which the parties entered into the contract for construction of the improvement. House Bill 1038 amended Property Code, §426.001(a), to provide that a SIRP request must be submitted to the commission not later than the 30th day after the tenth anniversary of either the date of the initial transfer of title from the builder to the initial owner of the home or improvement or, if there is no closing in which title is transferred, the date on which the construction of the improvement was substantially completed.

The amendments proposed to §313.4 implement these changes to Property Code, §426.001(a); add an additional 30 days to the 10-year period within which a SIRP request must be filed; and provide that, for transactions that do not involve a transfer of title, the filing period begins on the date on which the construction of the improvement was substantially completed rather than the date on which the parties entered into the contract for construction of the improvement. Additionally, the proposed amendments to §313.4 clarify that the filing period applies to the initial owner of an improvement and not just to the initial owner of a home. The proposed amendments are necessary for consistency with Property Code, §426.001(a)(2).

The second deadline for filing a request with the commission to initiate a SIRP is set forth in Property Code, §426.006. Previously, Property Code, §426.006, provided that the SIRP must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 30th day after the date the applicable warranty period expires. House Bill 1038 amended Property Code, §426.006, to provide that, for an alleged defect discovered during an applicable warranty period, a SIRP must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 90th day after the date the applicable warranty period expires. Thus, H.B. 1038 added an additional 60 days to the period within which a SIRP request may be filed and limited the applicability of this extended filing period to alleged defects discovered during an applicable warranty period.

The amendments proposed in §313.4(a)(1) implement the changes to Property Code, §426.006. The proposed amendments add an additional 60 days to the deadline to request a

SIRP for an alleged defect that is discovered during an applicable warranty period, so that the filing period will end not later than the 90th day after the date the applicable warranty period expires, rather than the 30th day after the warranty period expires.

A third deadline for SIRP requests was added to Property Code, §426.006, by H.B. 1038. Property Code, §426.006(b), establishes a new deadline for a SIRP request related to an alleged defect that would violate the statutory warranty of habitability and was not discoverable by a reasonable, prudent inspection or examination of the home or improvement within the applicable warranty period. For these defects, Property Code, §426.006(b), provides that a SIRP must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect and not later than the 10th anniversary of the date of the initial transfer of title from the builder to the initial owner of the home or improvement that is the subject of the dispute or, if there is no closing, the date that the parties entered into the contract for construction of the improvement. The amendments proposed in §313.4(b) implement these changes to Property Code, §426.006(b).

Amendments to §313.5. Filing a Request to Initiate the SIRP.

The commission proposes amendments to §313.5, *Filing a Request to Initiate the SIRP.* The proposed amendments are necessary to implement amendments to Property Code, §426.004(c), that were enacted by the 80th Texas Legislature in H.B. 1038. Previously, Property Code, §426.004(c), provided that the person who submits a request to initiate the SIRP must pay to the commission the home registration fee for the home if title to the home was transferred to the initial homeowner on or before January 1, 2004, or if the contract for improvements or additions between the builder and the homeowner was entered into before January 1, 2004. House Bill 1038 amended Property Code, §426.004(c), by requiring the commission to register homes that are the subject of a request to initiate the SIRP for which the title transfer to the initial homeowner or the date of the contract for improvements or additions occurred prior to January 1, 2004. The statute requires the builder to pay the registration fee.

The proposed amendments to §313.5(b) implement these statutory changes by clarifying that, if the affected home is not registered with the commission at the time that a SIRP request is filed, the commission shall register the home and the builder shall pay the registration fee for the home. The proposed amendments assign responsibility to the builder to pay the registration fee for a home that has not previously been registered with the commission and that is the subject of the SIRP. The proposed amendments eliminate questions and the need for the commission to make factual determinations regarding whether a homeowner who has initiated the SIRP must register the home or pay the home registration fee. Therefore, the proposed amendments will allow the commission to more efficiently register homes, initiate the SIRP, clarify the builder's role in the registration process, and protect the public.

Amendments to §313.6. Information Required for the Request.

The commission proposes amendments to §313.6, *Information Required for the Request* to implement statutory modifications, to change the qualifications that establish a builder under the Act, and require that evidence of the sale of a new home or the date of an agreement for construction, including any change orders, is provided as a part of a request, if the documents exist.

Previously, Property Code, §401.003(a)(3), defined a builder to include a person who constructs or supervises or manages the construction of an improvement to the interior of an existing home when the cost of the work exceeds $20,000. House Bill 1038 expanded this definition by including a person who sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervisions or management of the construction of, an improvement to the interior of an existing home when the cost of the work exceeds $10,000. The proposed amendments to §313.6(a) are necessary to implement this change. To initiate the SIRP for an alleged defect, the requestor would have to establish that the contract or the construction relates to an interior improvement with costs in excess of $10,000.

The amendments proposed to §313.6(a) also change the dates to be included with the SIRP. Previously, this subsection required a SIRP requestor to provide the date on which the agreement describing the transaction was signed or work commenced, whichever is earlier. The proposed amendments delete the requirement that the SIRP requestor must provide the date that work commenced and add a requirement that a SIRP requestor must provide the date on which the construction of the improvement was substantially completed. This change is necessary to implement the amendment of Property Code, §426.001(a)(2)(B), in H.B. 1038, which requires a SIRP request to be filed not later than the 30th day after the 10th anniversary of the date on which the construction of an improvement was substantially completed for transactions in which there was no closing in which title is transferred. Although H.B. 1038 deleted the reference in Property Code, §426.001(a)(2)(B), to the date that a contract for improvements was entered into, the proposed amendments to §313.6(a)(1)(B) retain the requirement that a SIRP requestor must provide the date on which the agreement describing the transaction was signed. This is because H.B. 1038 also added a new requirement in Property Code, §426.006(b)(2), that a SIRP request for a transaction in which there was no closing in which title was transferred and for an alleged defect that would violate the statutory warranty of habitability that was not discoverable by a reasonable, prudent inspection or examination of the home or improvement within the applicable warranty period must be submitted not later than the 10th anniversary of the date on which the contract for construction of the improvement was entered into. Thus, by requiring that a SIRP requestor provide both the date that construction of the improvement was substantially completed and the date that the agreement describing the transaction was signed, the commission can determine whether the SIRP request is eligible for its consideration under Property Code, §426.001(a)(2)(B) and §426.006(b)(2).

Proposed amendments to §313.6 add a requirement that the SIRP include a copy of the sales or construction contract and change order, if any. If these documents are in existence and submitted as part of the SIRP, commission staff is able to review documents in a more efficient manner.

Proposed amendments to §313.6(a) replace the reference to "chapter" with reference to "title" to indicate that the cross reference is to a rule section within Title 10 and to conform with *Texas Register* rule format guidance.

Amendments to §313.7. Notice of the Request.

The commission proposes amendments to §313.7, *Notice of the Request,* necessary to implement changes made by the 80th

Texas Legislature in H.B. 1038 to Property Code, §426.005 (a) and (f) and §428.001(d).

The proposed amendments to §313.7(a) clarify that, at the time a SIRP is initiated, the requestor must send to each of the other parties to the SIRP a copy of the request, information, and evidence. Previously, the rule did not specify that the SIRP requestor is the entity responsible for providing the information to the other party and did not specify that it is at the time that the SIRP is filed that the SIRP information must be provided to the other party. The requirement that a copy of the documents be sent to the opposing party will provide information to the other party regarding the specific items alleged to be defective, thereby encouraging better communication between parties regarding the alleged defects.

Amendments are proposed to add §313.7(d), which provides that, when the party which did not initiate the SIRP receives the list of alleged defective items, that non-initiating party has ten days from the date of receipt of the notice to review the list of defective items and may request in writing the commission add items alleged to be defective for inclusion in the third-party inspection. The provisions are needed because the commission favors efficient use of the SIRP process. By affording both parties an opportunity to contribute to the list of alleged defective items to be addressed in the SIRP, a more complete review can be efficiently made of all the alleged defects.

Amendments are proposed to add §313.7(e), to address the potential issues that arise when a builder initiates a SIRP and the homeowner declines to participate. In such instance, the commission will close the SIRP file and inform the parties, in writing, that the homeowner has elected not to participate in the process.

Amendments to existing §313.7(d) are found in proposed §313.7(f). Previously, homeowners were required to request a SIRP before initiating an action for damages. The proposed rule amendment clarifies that both homeowners and builders may access the benefits and are subject to the requirements of the SIRP process. Both homeowners and builders are required to fulfill SIRP requirements before proceeding to an action for damages.

Amendments are proposed to add §313.7(g). A homeowner is not required to go through the SIRP process before initiating an action for damages if, at the time a contract between the homeowner and builder was signed, the builder was supposed to be registered and was not or if the commission revoked the builder's registration. Builders were required to be registered on and after March 1, 2004. The provisions of Property Code, 426.005(f), apply to SIRP requests initiated after September 1, 2007, the date the statutory amendment became effective. When all these requirements are satisfied, the homeowner may proceed directly to an action for damages without first exhausting the SIRP administrative remedies at the commission.

Amendments to §313.11. Appointment of Third-Party Inspector.

The commission proposes amendments to §313.11, *Appointment of Third-Party Inspector,* necessary to implement a change in Property Code, §428.003(a), that was enacted by the 80th Texas Legislature in H.B. 1038. The proposed amendment provides that the commission must appoint an inspector within 30 days after the commission has determined that a request to initiate a SIRP is complete and that the dispute is eligible for the SIRP. Previously, the rule provided that the commission must make its appointment within 15 days after its determination that a SIRP request is complete and eligible for the SIRP.

The commission also proposes amendments to §313.11 to clarify the timeframe in which a party to the SIRP must object to the third-party inspector assigned by the commission. Each party has one opportunity to object to a third-party inspector that has been appointed by the Commission; however, such objection must be made within two business days from the date of notice of the identity of the third-party inspector. Commission staff determined that parties were not picking up registered letters from the U.S. Postal Service; therefore, finalization of the third-party inspector was often delayed. The proposed rule amendments eliminate the need for the commission to send correspondence regarding the identity of the third-party inspector by certified letter because the recipient of the letter will be presumed to have received the transmittal three days after the date of the letter when sent by regular first-class mail and presumed to have received the letter on the same day if sent by facsimile or by e-mail, unless the party is able to show otherwise.

The proposed amendments address deadlines in the SIRP process, move the SIRP through the process in a timely manner, and provide more time to the commission to properly review each request for a SIRP inspection. This will aid the commission staff in its review and assessment of SIRP requests that the commission continues to receive in high volume each month.

Additional proposed amendments to §313.11 to cross reference to §313.13, clarifying when parties may contact the third-party inspector and emphasizing that, when a party provides information to the third-party inspector, the party must also provide the information to the commission and to the other party to the dispute.

The commission proposes amendments to §313.11 to clarify that the commission is not required to assign an inspector whose name appears next on the list of available inspectors because, at times, it is necessary to select a third-party inspector with specialized knowledge about a particular alleged defective item. To allow for effective inspections to be performed, the rule acknowledges the commission's discretion to assign an inspector out of order of the prescribed list.

Amendments to §313.13. Home Inspection and the Third-Party Inspector's Report.

The commission proposes amendments to §313.13, *Home Inspection and the Third-Party Inspector's Report.* Proposed amendments to §313.13(a) expand the deadline during which the third-party inspectors must contact the parties to a SIRP. Previously, the third-party inspector had two business days to contact the parties. The proposed amendments provide greater flexibility by allowing the third-party inspector up to five calendar days after the inspector receives the SIRP request documents from the commission to contact the parties. The modification reflects the usual practice of most third-party inspectors.

Proposed amendments to §313.13(c) clarify that third-party inspectors should include sufficient information and documentation with their report to support their findings. Commission staff notes that some third-party inspectors provide insufficient information, documentation, or description to support the inspection report. Appropriate documentation includes photographs, measurements, interviews of the home owner, interviews of the builder, and interviews of any consultants. The proposed amendments indicate the commission's preference for inclusion of photographs to document the third-party inspector's findings, because inclusion of photographs will significantly reduce the

number of reports that must be returned to the inspector for revision or remand.

Proposed amendment to §313.13(g) will make applicable to both the builder and homeowner the requirement to provide documentation to the third-party inspector.

The proposed amendment to §313.13(i) is necessary to implement an amendment of Property Code, §428.004(a), that was enacted by the 80th Texas Legislature in H.B. 1038. Previously, Property Code, §428.004(a), required a third-party inspector to issue a recommendation within 15 days after the inspector received an appointment by the commission to perform an inspection of workmanship, materials, and non-structural matters ("workmanship inspection") in a SIRP. House Bill 1038 increased from 15 to 30 the number of days in which the third-party inspector of a nonstructural matter must issue the recommendation. When the disputed defect involves a structural matter, the third-party inspector must issue a recommendation within 60 days from the date the assignment is made. The effect of the statutory amendment is to grant third-party inspectors an additional 15 days to issue their recommendations for workmanship inspections. The proposed rule amendment increases the deadline from 12 days to 25 days from the date that the inspector receives from the commission the SIRP request and the materials submitted by the requestor to provide the commission with the workmanship and materials inspection report.

Amendments to §313.15. Extension of Time.

The commission proposes amendments to §313.15, *Extension of Time,* regarding extension of time necessary to increase the number of days from five to ten that the commission may extend a third-party inspector's deadline for conducting the inspection and issuing the inspection report. The amendment is needed for flexibility and to reflect the usual and practical extensions of time that are granted. Additional amendments are proposed for easier reading of existing text and to clarify that all parties do not have to be in agreement before the commission may allow an extension of time. Rather, the proposed change reflects that an extension of time is discretionary.

Amendments to §313.16. Third-Party Inspector's Report.

The commission proposes amendments to subsection (c) of §313.16, *Third-Party Inspector's Report,* regarding third-party inspector's report necessary to clarify that a time period of ten business days is a reasonable time for a third-party inspector to revise a report and return it to the commission. The revision is necessary to remove vague language and to encourage third-party inspectors to promptly address the revisions requested. The proposed amendment is consistent with other changes made in the statute to provide additional amounts of time for third-party inspectors to issue inspection reports.

Amendment to §313.17. Issues Remanded to the Third-Party Inspector.

The commission proposes amendments to §313.17, *Issues Remanded to the Third-Party Inspector,* for consistency with commission practice. Proposed amendments to §313.17(b) are necessary to clarify that the commission may assign a new, subsequent third-party inspector when the initial third-party inspector assigned to the SIRP fails to provide to the commission a report on remanded issues. Proposed amendments to §313.17(b) retain existing rule allowances; however, the proposed amendments simplify the rule language for easier reading and clarify the options available to the commission when addressing a third-party inspector's failure to provide a complete report on remanded items.

The proposed amendments to §313.17(c) provide the commission with five business days, rather than three, for the third-party inspector's report to be reviewed and forwarded to the builder and homeowner. The added days are necessary to allow commission staff sufficient opportunity to review and process the report, and the proposed amendment is consistent with the expansion of deadlines allowed in other portions of the Property Code.

Amendments to §313.18. Order for Reimbursement of Fees and Costs.

The commission proposes amendments to §313.18, *Order for Reimbursement of Fees and Costs,* regarding order for reimbursement of fees and costs necessary to implement changes in Property Code, §426.004 and §428.004, that were enacted by the 80th Texas Legislature in H.B. 1038 and to clarify a cross-reference.

House Bill 1038 added subsection (d) to Property Code, §426.004, which provides that the commission may reimburse an inspector for travel expenses incurred to complete a SIRP inspection regardless of whether the expenses exceed the amount collected under Property Code, §426.004. The proposed amendments in §313.18(c) implement this change and provide the circumstances under which travel expenses will be reimbursed. The expenses covered by this provision include actual mileage, meals for overnight stays, and lodging for overnight stays. The proposed amendments will aid the commission in obtaining and retaining the services of third-party inspectors who are willing to perform SIRP inspections for the commission in areas of the state in which there is little or no coverage by other third-party inspectors. It is anticipated that this will improve the commission's ability to expedite the SIRP process to homeowners and builders who are located in these areas.

House Bill 1038 also added subsection (e) to Property Code, §428.004, which provides that the commission may not require a builder to reimburse fees or inspection expenses under Property Code, §428.004, if, before the inspection, the builder offered to make repairs or have repairs made substantially equivalent to those required by the findings of the final report confirming the defect requiring repair. The proposed amendments implement this change and require the builder to demonstrate that the offer was made in writing, that the homeowner had notice of the offer to repair, and that the offer was not accepted by the homeowner.

The proposed amendments also correct a citation reference regarding fees paid by the homeowner. The proposed amendment changes the cross-reference from §313.5 to correctly reference §313.8.

Amendments to §313.20. Appeal Process.

The commission proposes amendments to §313.20, *Appeal Process,* necessary to implement a change in Property Code, §429.001(c), that was enacted by the 80th Texas Legislature in H.B. 1038, and to clarify the appellate process from the point at which the appeal panel remands an item back to the third-party inspector. The proposed amendments provide that, upon receipt of an appeal from either party in a SIRP proceeding, the Appeals Panel will review the recommendation of the third-party inspector for compliance with Title 16 of the Property Code.

The proposed amendments clarify the standard under which the Appellate Panel must review the recommendations of third-party

inspectors in SIRP proceedings. Previously, compliance with the Act was not specifically mentioned in Property Code, §429.001(c), as the standard of review for third-party inspectors' recommendations.

In addition, the proposed amendments cross reference to §313.17 and clarify that, when the commission's appeal panel remands one or more items to the third-party inspector, the inspector will respond to the items remanded and provide a report to the commission for consideration by the appeal panel. When a third-party inspector fails to file such report on remand within ten business days of the receipt of the appellate report, then the commission assigns a new third-party inspector to inspect the remanded items and to file a report with the commission regarding those items.

Amendments to §313.20(f) are proposed to reconcile a timing issue created when the builder and homeowner file appeals of the third-party inspection report weeks apart. Previously, the initial triggering mechanism was from the date of appeal. However, the other party might not file an appeal for several days thereafter. The proposed amendment triggers the date from the expiration of the period of time given to the parties to file an appeal. The amendment is necessary to assure that the appellate panel has adequate time to review and consider the appeal and third-party inspection report.

In addition, amendments are proposed to §313.20(h) to delete the term "Executive Director" and substitute the term "commission" for consistency with the definition of commission under §301.1(7) of this title and with commission practice.

Amendments to §313.21. Offer to Repair After Issuance of a Final Unappealable Report.

The commission proposes amendments to §313.21, *Offer to Repair After Issuance of a Final Unappealable Report,* necessary to implement a change to Property Code, §418.001(21), which was modified by the 80th Texas Legislature in H.B. 1038. The statutory provision makes clear that the commission may initiate a disciplinary action when a builder repeatedly fails to make an offer to repair based on the recommendation of the third-party inspector's report or the final and unappealable appeal panel decision affirming the existence of a defect.

Amendments to §313.26. Third-Party Inspectors as Witnesses. The commission proposes amendments to §313.26, *Third-Party Inspectors as Witnesses,* to clarify that the commission has complied with statutory requirements, established a fee schedule, and made that schedule of fees available to the public on the commission's Web site.

Concurrent with this rulemaking proposal, the commission proposes the intention to review necessity of the rules in 10 TAC Chapter 313, including §§313.1 - 313.27, in accordance with Government Code, §2001.39, which requires each state agency to periodically review its rules. Persons with comments relating to the continued existence of these rules may submit remarks separately or concurrently with comments regarding the proposed amendments.

Susan Durso, General Counsel, has determined that, for each year of the first five-year period that the proposed amendments are in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the proposed amendments. There will be a fiscal impact on state government to the extent that agency expenditures on inspector travel increase. However, this fiscal impact was considered by the legislature when it added the authorization to the agency's enabling Act for reimbursement of third-party inspectors for their travel expenses.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, the public will benefit from: (1) clarification regarding the deadlines by which persons may submit a request to the commission to initiate the SIRP; (2) having additional time within which to initiate the SIRP; (3) clarification of the differences between defects that were discovered and defects that were not discoverable during the applicable warranty period; (4) not having to register or pay the home registration fee for a home in order to initiate the SIRP, so long as the homeowner is not the builder of the home; (5) having greater accessibility to the SIRP when interior improvements cost between $10,000 and $20,000, because such projects are now eligible for the SIRP process; (6) having a better understanding of the notification to other parties that is required when a SIRP request is filed with the commission; (7) the commission staff having more time to properly review and assess each SIRP request that it receives to ensure that each SIRP request is complete and within the jurisdiction of the commission to consider; (8) third-party inspectors having additional time within which to issue their recommendations for workmanship inspections; (9) a greater number of third-party inspectors who are available to conduct SIRP inspections in areas that currently have few or no third-party inspectors available to conduct the inspections, which, in turn, will expedite the inspections and the SIRP as a whole for affected homeowners and builders in these areas; (10) the Appeals Panel having a clearer standard to apply in its reviews of third-party inspectors' recommendations in SIRP proceedings; and (11) the increased incentive to builders to resolve complaints before homeowners initiate the SIRP or litigation against them.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there will be no significant effect on individuals or large, small, and micro-businesses as a result of the adoption of the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there will be an adverse economic effect on small businesses that provide remodeling services in the range of cost between $10,000 and $20,000 and an insignificant adverse economic effect on small businesses that are required to pay the home registration fee as a result of a customer having filed a request for a state inspection. However, because the proposed amendments track the legislative mandate that these businesses are subject to the SIRP and must pay the home registration fee for homes that they have not registered with the commission that are involved in the SIRP, there is no regulatory alternative available. Therefore, no regulatory flexibility analysis is necessary.

Interested persons may submit written comments on the proposed rule amendments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "SIRP" with the rule number(s) in

the subject line. Comments should be organized in a manner consistent with the organization of the proposed rule amendments. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register.* Comments received after that deadline submission date or comments submitted electronically without "SIRP" with the rule number(s) in the subject line may not be considered.

The amendments are proposed pursuant to Property Code, §§408.001, 401.003, 418.001, 426.001, 426.004 - 426.007, 428.001, 428.003, 428.004, and 429.001, as amended by H.B. 1038 of the 80th Texas Legislature, and Government Code, §§2001.021 - 2001.039, especially §2001.39.

No other statutes, articles, or codes are affected by the proposal.

§313.1. Purpose.

(a) The state-sponsored inspection and dispute resolution process (SIRP) described in this chapter applies to a dispute that:

(1) is between a homeowner and a builder;

(2) arises from a transaction governed by the Act;

(3) is a result of alleged construction defect(s) that were discovered on or after September 1, 2003; and

(4) is the basis for a claim other than a claim solely for personal injury, survival, wrongful death or damage to goods.

(b) The commission shall provide any person who files a request with a copy of the commission's policies and procedures relating to the SIRP process [~~investigation and resolution of a request.~~]

§313.2. Prerequisite to State-sponsored Inspection and Dispute Resolution Process (SIRP).

(a) Before a homeowner files [~~may file~~] a request to initiate the SIRP, the [~~a~~] homeowner must give the builder a 30-day written notice of any claimed construction defect(s).

(b) When the homeowner initiates the SIRP request in accordance with [~~After notice has been provided to the builder as required in~~] §313.2(a), the homeowner must [~~also~~] provide the builder, or its designated consultants, a reasonable opportunity to inspect the affected home if the builder requests such an opportunity.

(c) If a homeowner contacts the commission to initiate the SIRP before the homeowner has provided the builder with the required written notice and the applicable inspection opportunity, the homeowner will be provided with the requirements and the procedures for filing a request to initiate the SIRP, and instructions on the procedure to initiate the SIRP if the dispute remains unresolved.

(d) If the homeowner has failed to provide thirty days notice for every item listed in a SIRP request, the commission will:

(1) exclude the item from the list of alleged defects to be inspected; [~~or~~]

(2) [~~at the homeowner's request,~~] hold the SIRP during [~~until the builder has had~~] the requisite thirty days notice period [~~for all alleged items to be inspected~~]; or

(3) allow the builder to waive the requisite notice under this section if the builder agrees in writing that the third-party inspector can inspect and report on alleged defects for which the builder did not receive thirty days notice before moving forward with the SIRP requested inspection of those items.

§313.3. Notice of Defect Alleging Threat to Health or Safety.

(a) A builder who receives written notice of an alleged construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If a builder fails to cure the defect in a reasonable time, the homeowner may have the defect cure and recover from the builder of the homeowner's reasonable costs to cure the defect, reasonable attorney's fees, expenses associated with curing the defect, and other damages not inconsistent with the Act.

(b) The commission does not have authority to order the reimbursement of expenses incurred by a homeowner under subsection (a) of this section.

(c) Defects that have been repaired before a SIRP is requested are not eligible for inspection or repair recommendation under the SIRP process.

§313.4. Timely Filing a Request to Initiate the SIRP.

(a) For alleged construction defects discovered during the applicable warranty period [~~To participate in SIRP~~], a person must file a request to initiate the SIRP:

(1) on or before the second anniversary of the date of the discovery of the alleged construction defect(s), but not later than the ninetieth [~~thirtieth~~] day after the expiration date of any warranty period applicable to the alleged construction defects(s); and

(2) not later than the thirtieth day after [~~on or before~~] the tenth anniversary of :

(A) the date of the initial transfer of title from the builder to the initial owner of the affected home or improvement;[~~,~~] or

(B) if the transaction that is the subject of the dispute did not involve a title transfer, the date that the construction was substantially complete [~~commenced or the date on which the agreement describing the transaction was signed, whichever was earlier~~].

(b) For alleged construction defects that violate the statutory warranty of habitability and were not discoverable by a reasonable, prudent inspection or examination of the home within the applicable warranty period, a person must file a request to initiate the SIRP:

(1) on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect; and

(2) not later than the 10th anniversary of the date of the initial transfer of title from the builder to the initial owner of the affected home or improvement, or, if there was no transfer of title, the date on which the agreement describing the transaction was signed.

§313.5. Filing a Request to Initiate the SIRP.

(a) A [~~Either the~~] homeowner or [~~the~~] builder may initiate the SIRP by filing a request with the commission.

(b) If the affected home is not registered with the commission at the time the request is filed, the commission shall register the home and the builder shall pay the registration fee for the home. [~~the requesting party must also register the home with the commission by submitting a Home Registration Form and the appropriate fee. A builder who failed to register the affected home in accordance with Chapter 303 of this title, Registration of Homes, shall reimburse the cost of the home registration fee if paid by the homeowner under this section~~].

(c) When a person contacts the commission to initiate the SIRP, the commission will provide the person with information necessary to file a request, information on the applicable fees to request a third-party inspection, the registration status of the affected home and instructions to register an unregistered home, if applicable.

§313.6. Information Required for the Request.

(a) The request shall be submitted on a commission-prescribed form and must include:

(1) a description of the transaction giving rise to the dispute, including:

(A) the date on which the title transferred from the builder to the initial homeowner, if the transaction giving rise to the dispute was for new home construction on the builder's property; or

(B) the date on which the construction of the improvement was substantially completed and the date on which the agreement describing the transaction was signed [~~or work commenced, whichever is earlier~~], if the transaction giving rise to the dispute did not involve a title transfer, including new home construction on the homeowner's property, a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $10,000 [~~$20,000~~].

(2) a copy of a signed sales or construction contract and any applicable change orders;

(3) [~~(2)~~] credible documentation that establishes that the homeowner provided the builder with or that the builder received written notice of the alleged construction defect(s) at least thirty days prior to filing the request if the request was initiated by the homeowner;

(4) [~~(3)~~] a general description of the builder's response to the homeowner's notice of alleged construction defect(s) provided pursuant to §313.2(a) of this chapter, and a copy of the written response, if any;

(5) [~~(4)~~] a reasonably detailed description of the alleged construction defect(s) included in the request;

(6) [~~(5)~~] a copy of any applicable written warranty;

(7) [~~(6)~~] an itemized list of all out-of-pocket expenses and engineering or consulting fees incurred by the requestor in connection with the alleged construction defect(s);

(8) [~~(7)~~] a list of the names and addresses of all professionals or other persons, known to the requestor at the time of the filing of the request, who have inspected the alleged construction defect(s) on behalf of the requestor; and

(9) [~~(8)~~] any documents or other tangible things that depict the nature and cause of the alleged construction defect(s) and that depict the nature and extent of repairs necessary to remedy the construction defect(s), including, expert reports, photographs, and videotapes, if these documents and tangible things are either within the requestor's physical possession or if the requestor has the right to obtain the document or tangible thing from a third party, such as an agent or a representative of the requestor.

(10) [~~(9)~~] A requestor is not required to provide as a part of a SIRP request any of the following:

(A) any documents or tangible things that were prepared or developed in anticipation of litigation, for trial or for an arbitration proceeding by the requestor's attorneys or by the attorneys' representatives or agents for the requestor;

(B) any documents or tangible things that reflect communications between a requestor and the requestor's attorneys or the attorneys' representatives or agents on behalf of the requestor and that were made in anticipation of litigation, for trial or for an arbitration proceeding; or

(C) the name of any person who inspected the home on behalf of the requestor in connection with the construction defect(s) alleged in the request before the SIRP request was submitted to the commission, so long as the requestor will not call upon this person as an expert witness or use any of the materials prepared by this person during either the SIRP or any action between the builder and the homeowner that arises out of an alleged construction defect that is the subject of the request.

(b) With regard to information provided under subsection (a)(8) [~~(a)(7)~~] and (a)(9) [~~(a)(8)~~], a requestor who fails to submit the name of any person who inspected the home on behalf of the requestor prior to the filing of a SIRP request in connection with the alleged construction defect(s) may be prohibited from designating that person as an expert witness and from using any materials prepared by such person in the SIRP or any action arising out of any alleged construction defect(s) that is the subject of the request.

§313.7. Notice of the Request.

(a) At the time that a request is filed with the commission, the [~~The~~] requestor shall send a copy of the request and copies of all information submitted to the commission along with the request, by certified mail, return receipt requested, to all other interested parties to the dispute.

(b) A copy of the request and the submitted information mailed to other interested parties under subsection (a) of this section must also be mailed to counsel for any interested party represented by counsel, if the identity of counsel is known to the requestor.

(c) An interested party who receives notice that a request has been submitted to the commission and who has information pertaining to the determination of eligibility under §313.9 of this chapter shall submit that information to the commission and provide a copy of the information to the requestor within ten days of receiving a copy of the notice of the request.

(d) A respondent who receives a copy of a request may request that additional items be added to the list of alleged defects for inspection. The respondent must provide the request for additional items in writing to both the commission and to the requestor within ten days of receiving a copy of the notice of the request.

(e) When the homeowner receives notice of a SIRP request and declines to participate in the process, the commission will close the file and notify the parties that the homeowner has elected not to participate in the state-inspection process.

(f) [~~(d)~~] A homeowner or builder is required to request a SIRP prior to initiating an action for damages or other relief arising from an alleged construction defect.

(g) On or after September 1, 2007, a homeowner may, but is not required to, request a SIRP in compliance with subsection (f) of this section if:

(1) at the time a homeowner and builder entered into a contract, the builder was required by Property Code §416.001 to be registered with the commission but was not registered; or

(2) the builder's certificate of registration has been revoked by the commission.

§313.11. Appointment of Third-Party Inspector.

(a) No later than thirty [~~fifteen~~] days after the commission has determined that the request to initiate a SIRP is complete and that the dispute is eligible for the SIRP, the commission shall identify a third-party inspector for assignment to conduct an inspection and shall notify the requestor and respondent of the identity of the third-party inspector in writing.

(1) Written notification under this subsection will be provided by the most expedient and effective means that is available to both parties, including facsimile or electronic transmission.

(2) The commission, in its sole discretion, shall determine the most expedient and effective means available to both parties for transmission of the written notice of the appointment based upon the contact information provided by the parties.

(b) The commission shall identify a qualified third-party inspector from the list of registered third-party inspectors maintained by the commission. The inspector identified shall be the next available inspector on the list of qualified inspectors in the affected home's geographic region. The commission has discretion to diverge from assignment of the next available inspector when necessary to identify an inspector who demonstrates proficiency in an area appropriate for the items listed in the SIRP.

(c) Each party shall have only one opportunity to object to the third-party inspector identified, with or without cause. The objection must be submitted to the commission in writing, by mail, facsimile or electronic transmission within two business days from [~~of~~] receipt of notice identifying [~~of the identity of~~] the third-party inspector. Unless otherwise shown, receipt of notice of the identity of the third-party inspector under this section shall be presumed to have been received:

(1) on the day sent, if sent by facsimile or electronic transmission; or

(2) three days after the date on which the instrument was mailed, if sent by first-class mail.

(d) Failure to timely notify the commission of a party's objection to the notice of third-party inspector's identity waives the party's right to object.

(e) If the commission does not receive a timely written objection to the third-party inspector notice, the commission shall notify the third-party inspector of the SIRP assignment and provide the inspector with the names of the interested parties and their counsel, if any, and a copy of the SIRP request and other information provided by the parties, if it relates to the inspection request.

(f) After receipt of the assignment notice under subsection (e) of this section, the third-party inspector shall advise the commission of a conflict of interest that prevents him from performing the inspection without bias for or against either party to the dispute or any other reason that the third-party inspector is unable to accept the assignment. If the third-party inspector advises the commission of a conflict of interest that prevents him from accepting the assignment, the inspector will return the material provided to the commission.

(g) If the third-party inspector assigned is unable to accept the assignment or a party objects timely to the third-party inspector identified, the commission shall identify another qualified third-party inspector and the process for assignment of a third-party inspector shall begin, again, as provided in this section [~~subsection~~].

(h) If a third-party inspector declines an assignment without an explanation that is satisfactory to the Executive Director on more than three occasions, the commission may consider that information when determining whether to continue offering assignments to the inspector and whether to renew the third-party inspector's registration under Chapter 303 of this title.

(i) Until the commission has finally assigned a third-party inspector and the inspector has contacted the parties to determine the date of the inspection, the parties shall not initiate contact with the third-party inspector.

(j) After the third-party inspector has made initial contact with the parties to arrange an inspection, a party may contact the third-party inspector for purposes related to scheduling the third-party inspection, responding to a third-party inspector's inquiry, or to provide written information in accordance with §313.13(h) of this chapter.

§313.13. Home Inspection and the Third-Party Inspector's Report.

(a) As soon as practicable but no later than five [~~two (2) business~~] days after receipt of the SIRP request documents, the appointed third-party inspector shall contact the homeowner to ascertain several dates and times that are mutually convenient to conduct an inspection of the affected home. The third-party inspector shall then make reasonable attempts to contact the builder on regular business days during regular business hours to determine whether the builder or a representative is available to attend the inspection on one of the identified dates. If the builder affirms to the inspector that the builder would like to be present or to send a representative, the third-party inspector shall make reasonable efforts to work cooperatively with the builder and the homeowner to identify a mutually convenient date and time to conduct the inspection. If either party to the dispute fails to work cooperatively with the third-party inspector to arrange a time and date for the inspection, the third-party inspector shall notify the commission. Using the information provided by the third-party inspector regarding potential dates and times for the inspection, if any, the commission will resolve the matter for the parties by setting the date and time for the inspection.

(b) The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) The third-party inspector shall gather all information and other data that the third-party inspector, in the inspector's sole professional judgment, deems relevant to conduct the inspection and write the inspection report. Complete reports include, but are not limited to photographs, measurements, and interviews of [~~and shall gather the information by any reasonable means including taking photographs and measurements and interviewing~~] the homeowner, the builder, and any consultants present, as necessary [~~in order~~] to document the inspection of the alleged defects.

(d) A third-party inspector may conduct interviews at a later date or outside the presence of others not aligned with the party subject to the interview, if the third-party inspector in the inspector's sole discretion deems it preferable for the orderly conduct of the inspection.

(e) The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner. If the third-party inspector is required to suspend an inspection under this subsection, upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs paid by the commission of any second inspection fee required as provided in §313.18 of this chapter.

(f) The third-party inspector shall not engage independently or employ the services of any testing company or any consultant.

(g) Except as otherwise provided under §313.6(a)(10) [~~§313.6(a)(9)~~] of this chapter, the respondent [~~builder~~] shall submit to the third-party inspector any documentation or tangible things created or generated as a result of having received a notice of alleged construction defect(s) under §313.2 of this chapter for consideration in the third-party inspector's report to the commission.

(h) Either party may submit any information that the party wants considered by the third-party inspector in preparation of the inspection report to the inspector prior to the inspection or within a reasonable time after the inspection such that the inspector has an opportu-

nity to review the information and timely submit the inspection report to the commission. A party that provides information to a third-party inspector shall also provide a copy of the information to the other party to the dispute and to the commission.

(i) If the alleged construction defect(s) described in the request do not include a structural matter, the third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection, but not later than the 25th [~~12th~~] day after the date the third-party inspector receives the SIRP request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(j) If the alleged construction defect(s) described in the request include a structural matter:

(1) the third-party inspector shall inspect the home as soon as practicable after receipt of the request from the commission, but not later than 25th [~~12th~~] day after the date the third-party inspector receives the request and the requestor's submitted materials from the commission; and

(2) the third-party inspector shall submit a report after the inspection with recommendations to the commission as soon as practicable, but not later than the 55th [~~45th~~] day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(k) The third-party inspector's report shall:

(1) set forth the inspector's findings as to whether each alleged defect is in or out of compliance with the applicable warranty and building and performance standards;

(2) identify the warranty and building and performance standards upon which each finding is based; and,

(3) include one or more reasonable repair or remediation options to address any alleged construction defects found.

(l) A third-party inspector's report shall not include:

(1) a determination of liability or recommendation for payment of monetary damages;

(2) a price for any recommended repairs;

(3) comments regarding matters outside the scope of the SIRP or the third-party inspector's duties;

(4) a determination of the value of any loss allegedly suffered by the homeowner; or

(5) findings or recommendations for repair for alleged construction defects that are not listed in the SIRP or items that have been excluded by the commission as ineligible for inspection unless both the homeowner and builder agree in writing that the third-party inspector can include an inspection of those items in the report or unless the third-party inspector observes a construction defect that if left uncorrected immediately threatens the health and safety of the occupants.

§313.15. Extension of Time.

(a) The commission [~~Executive Director~~] may grant an extension of time for a period of no longer than ten [~~five~~] days for any deadline imposed on the third-party inspector under §313.13 of this chapter upon the written request of a third-party inspector.

(b) The commission [~~Executive Director~~] may grant an extension of time for any deadline imposed on the third-party inspector under §313.13 of this chapter upon receipt of a written request from either party to the SIRP.

(c) The commission may [~~Executive Director shall~~] grant an extension of time requested under subsection (a) of this section upon a showing that the cause for the delay was not reasonably foreseeable by the third-party inspector when the appointment was accepted.

(d) The commission may [~~Executive Director shall~~] grant an extension under subsection (b) of this section [~~as follows~~]:

(1) for any reasonable period requested without regard to cause if the parties to the dispute agree to the extension in writing; [~~or~~]

(2) for any reasonable period requested under the circumstances upon a showing of good cause by the requesting party; or

(3) when the parties [~~if the other party~~] to the dispute do [~~does~~] not agree to an extension.

(e) The commission's [~~Executive Director's~~] decision on whether to grant or deny an extension of time requested under this section is a final agency decision not subject to further administrative appeal.

§313.16. Third-Party Inspector's Report.

(a) The third-party inspector's report shall be submitted to the commission on the commission's Third-Party Inspection Form or in a format substantially similar to the commission's form, so long as the report includes all of the information required by the commission's form.

(b) The commission shall return any third-party inspector's report that fails to provide the required information or that includes findings, conclusions, comments or other information outside the scope of the third-party inspector's duties to the assigned third-party inspector for revision.

(c) If a third-party inspector fails to revise a report returned for revision within ten business days [~~a reasonable time~~] after notification of the need for revision, the commission may consider that failure in making a determination whether the third-party inspector has fulfilled his duties and is thus eligible for payment and in making a determination as to whether to assign the third-party inspector to future SIRP requests or to renew the third-party inspector's registration under Chapter 303 of this title.

(d) The third-party inspector shall submit his completed report to the commission and the commission shall promptly transmit the completed report, or revised report if required, to the homeowner and the builder.

§313.17. Issues Remanded to the Third-Party Inspector.

(a) If the appellate panel remands an issue to the third-party inspector under §313.20 of this chapter, the third-party inspector shall respond to the matter remanded as directed by the appellate panel and file the third-party inspector's report on the remanded matter(s) with the commission within ten business days of receipt of the appellate report.

(b) If a third-party inspector fails to timely file the report on remanded matters, the commission may: [~~consider that failure in making a determination whether the third-party inspector has fulfilled his duties and is thus eligible for payment and in making a determination as to whether to assign the third-party inspector to future SIRP requests or to renew the third-party inspector's registration under Chapter 303 of this title.~~]

(1) assign a subsequent third-party inspector to inspect the remanded items;

(2) decline to pay the initial third-party inspector for failing to complete the report required on remand;

(3) choose not assign the initial third-party inspector to future SIRP requests; and

(4) deny the initial third-party inspector's application for registration renewal under Chapter 303 of this title.

(c) Within five [~~three~~] business days of receipt of the third-party inspector's report filed pursuant to subsection (a) of this section, the commission [~~Executive Director~~] shall issue the report to the parties.

(d) A report issued on remanded matters is subject to appeal pursuant to the provisions of §313.19 and §313.20 of this chapter.

§313.18. Order for Reimbursement of Fees and Costs.

(a) Upon issuance of a final unappealable report in which the findings support all or a portion of the allegations of the requesting party and the requesting party is the homeowner, the Executive Director shall issue an order on behalf of the commission to reimburse the fees paid by the requestor and the costs of the inspection paid by the commission, except as otherwise provided in §313.13(e) of this chapter.

(1) A builder may appeal [~~a notice of~~] the order to reimburse fees and costs under this subsection.

(2) To appeal the [~~notice of~~] order to reimburse fees under this subsection, the builder must file written notice of its appeal with the commission. The commission will then set the appeal for a hearing with the SOAH. The hearing will be conducted pursuant to commission rules. In order to overcome the presumption that the builder must reimburse the commission for the cost of the inspection and fees paid by the requestor, the builder must demonstrate [~~by credible documentation~~] that, prior to the submission of the SIRP request to the commission, the builder made a written offer to the homeowner to repair, by the builder or a third-party, all of the finally affirmed construction defects in substantially the same manner as recommended in the commission's final unappealable report, and that the homeowner had notice of the offer, and that offer was not accepted by the homeowner.

(3) The notice of appeal must be received by the commission within ten calendar days of the date that the commission notices the builder of the obligation to reimburse the fees and costs under subsection (a) of this section.

(4) Notwithstanding a builder's successful appeal of an order to reimburse the commission for inspection fees issued under this subsection, the commission will reimburse the SIRP request fee to any homeowner who initiates a request and pays the appropriate fees under §313.8 [~~§313.5~~] of this chapter, if the final unappealable report issued by the commission affirms at least one alleged construction defect.

(b) If a third-party inspector finds it necessary to suspend an inspection under §313.13(e) of this chapter because a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner, then upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs of any second inspection fee required.

(c) If a third-party inspector conducts a SIRP inspection in a county other than the third-party inspector's county or counties of availability as reflected in the inspector's registration on file with the commission at the time of assignment, then the commission may reimburse the inspector at or below the state employee reimbursement rate as determined by the Texas Comptroller, for actual travel expenses pre-approved by the commission, incurred, and documented by the inspector on the approved travel voucher form, submitted with accompanying receipts or proper documentation for:

(1) actual mileage;

(2) meals, for overnight stays only; and

(3) lodging, for overnight stays only.

§313.20. Appeal Process.

(a) A homeowner or builder may appeal the standards applied to support findings or the reasonableness of the repair recommendations in a third-party inspector's report.

(b) Upon receipt of an appeal from either party, the commission [~~Executive Director~~] shall refer the appeal to a three-person panel of state inspectors. If the request includes a structural matter, one of the panel members shall be a licensed professional engineer.

(c) The appellate panel shall conduct a review of the third-party inspector's report for compliance with the Act and the written documents and tangible things considered by the third-party inspector in making the findings and recommendations, including but not limited to materials submitted with the request, any information or data gathered by the third-party inspector and documentation or tangible things provided to the third-party inspector by one of the parties during the SIRP and prior to the issuance of the report.

(d) Information submitted with the appeal by either party that was not provided to the third-party inspector for his consideration when preparing his report will not be provided to or considered by the appellate panel.

(e) The appellate panel shall make written findings of fact and shall recommend approval, rejection or modifications to the findings and recommendations of the third-party inspector or shall recommend that the matter be remanded to the third-party inspector for further action as directed by the appellate panel.

(f) The appellate panel shall file a written report of its findings and recommendations with the commission [~~Executive Director~~] not later than the 25th day after the expiration of the time to appeal the third-party inspection report under §313.19 [~~notice of appeal is filed with the commission~~].

(g) The commission shall transmit the appellate panel's rulings to the parties to the appeal not later than the fifth day after receipt of the appellate panel's rulings.

(h) The commission [~~Executive Director~~] shall return to the appointed third-party inspector for a response to any issue remanded by the appellate panel. The third-party inspector will issue a report on any remanded items and return the report to the appellate panel in accordance with §313.17 of this title.

(i) A ruling by an appellate panel under this section is a final agency decision not subject to further administrative appeal.

§313.21. Offer to Repair After Issuance of a Final Unappealable Report.

(a) Not later than the 15th day after a SIRP report issued by the commission has become final and unappealable, a builder may make a written offer of settlement to the homeowner to repair the [~~alleged~~] construction defect(s).

(b) The offer must be sent by certified mail, return receipt requested, to the homeowner at the homeowner's last known address or the homeowner's attorney, if the homeowner is represented by counsel.

(c) The offer may include either an agreement by the builder to repair or to have repaired by an independent contractor, partially or totally at the builder's expense, or at a reduced rate to the homeowner, any construction defect(s) included in the SIRP request.

(d) The offer shall include in reasonable detail the repairs to be made and shall provide that the repairs will be made within forty-five days after the date the builder receives written notice of the home-

owner's acceptance of the offer, except as delayed by the homeowner or by the occurrence of events beyond the builder's control.

(e) A builder's repeated failure to make an offer to repair based on the recommendation of a third-party inspector or the final and unappealable holding of an appeal panel decision may result in disciplinary action by the commission.

§313.26. Third-Party Inspectors as Witnesses.

(a) If a commission-appointed third-party inspector who has conducted an inspection pursuant to this chapter is subpoenaed by a party to the dispute that was the subject of the inspection to provide testimony by deposition, in court or in any alternative form of dispute resolution proceeding, or to provide other expert witness services, the party who caused the subpoena to be issued must pay to the third-party inspector a reasonable fee and related expenses for the services requested.

(b) The commission has established [~~shall establish~~] reasonable fees for witness services performed by a registered third-party inspector who is subpoenaed to provide services as described in subsection (a) of this section. The fee schedule is available through the commission Web site and by request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706420
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER L. NUCLEAR DECOMMISSIONING

16 TAC §25.304

The Public Utility Commission of Texas (commission) proposes new §25.304, regarding the funding of nuclear decommissioning trusts and the related requirements to be met by power generation companies (PGCs) operating in Texas. The proposed new rule is intended to implement the requirements of Public Utility Regulatory Act (PURA) §39.206, Texas Utilities Code Annotated (Vernon 2007), as added by the 80th Texas Legislature. The proposed new rule will establish the minimum financial assurance standard for PGCs interested in constructing nuclear generation power plants as well as the funding, administration, and monitoring requirements for nuclear decommissioning trust funds. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 34888 is assigned to this proceeding.

Mr. Richard Lain, Financial Analyst, Rate Regulation Division, Financial Review Section, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lain has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that PGCs are financially capable of decommissioning nuclear power plants once they have been removed from public service. This development will assist the State of Texas in achieving its goal of fostering a competitive market for the purchase and sale of electricity. The commission currently has rules applicable to nuclear decommissioning trusts for nuclear generating plants constructed by the previously bundled electric utilities in Texas. PURA §39.206 requires the commission to develop similar rules for new nuclear generating plants that may be constructed by PGCs operating in Texas, as a means of encouraging the development of nuclear power in the state. The construction of such plants may provide benefits to the public interest by diversifying the fuel mix of generating plants in Texas and making Texas less dependent upon existing fossil fuel sources. The proposed new section provides a structure for funding of nuclear decommissioning trusts that places the funding obligation on owners of the plants, with ratepayers only providing a guarantee for funding. The proposed new section also specifies the information required to establish the funding mechanism and the reporting requirements to enable the commission to monitor and enforce the requirements for nuclear decommissioning trusts. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Mr. Lain has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, February 1, 2008, at 9:30 a.m. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the implementation of the proposed section. All comments should refer to Project Number 34888.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.206, which requires the commission to adopt rules governing the establish-

ment and operation of nuclear decommissioning trusts established for new nuclear generating units.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.206.

§25.304. Nuclear Decommissioning Funding and Requirements for Power Generation Companies.

(a) Purpose. The purpose of this section is to establish the terms for power generation companies (PGCs) for using a PGC decommissioning trust to satisfy the financial assurance requirements for decommissioning a nuclear generating unit and to delineate the rights and obligations of PGCs electing to use a commission-approved method for providing funds from Texas customers for decommissioning a nuclear generating unit, as a means of complying with nuclear decommissioning financial assurance requirements.

(1) A PGC is not required to use the methods set out in this section and may discontinue the use of the methods set out in this section, if it chooses to satisfy the financial assurance requirements of the federal Nuclear Regulatory Commission by using other methods acceptable to the Nuclear Regulatory Commission.

(2) A PGC decommissioning trust established in accordance with this section is separate from a Nuclear Decommissioning Trust created under §25.303 of this title (relating to Nuclear Decommissioning Following the Transfer of Texas Jurisdictional Nuclear Generating Plant Assets).

(b) Applicability. A PGC owning all or a portion of a qualifying nuclear generating unit may use a PGC decommissioning trust as an external sinking fund in compliance with this section provided that the use of the methods of financial assurance set out in this section shall be available only to the first six nuclear generating units under construction after January 1, 2007 and before January 15, 2015, that elect to use a PGC decommissioning trust.

(c) Definitions.

(1) Decommissioning--includes the safe decommissioning and decontamination of a nuclear generating unit, equipment, and materials consistent with federal Nuclear Regulatory Commission requirements.

(2) External sinking fund--A fund established and maintained by setting aside funds periodically in an account segregated from the PGC's assets and outside the PGC's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(3) PGC decommissioning trust--Funds that are contained in one or more external and irrevocable trusts created for the purpose of protecting and holding revenue collected from a PGC to cover the costs of decommissioning a Texas jurisdictional nuclear generating plant at the end of its useful life.

(4) Retail electric customer--A retail electric customer in a geographic area of Texas in which retail customer choice has been implemented, or a retail electric customer of a municipally-owned utility or electric cooperative that has an agreement to purchase power from a nuclear generating unit.

(d) Application. If a PGC elects to use a PGC decommissioning trust, the PGC shall submit an application to the commission for an order establishing the amount of annual decommissioning funding and approving trust agreements. A PGC may combine applications for more than one qualifying nuclear generating unit. An application must contain the following information:

(1) Identification of each nuclear generating unit included in the application;

(2) Quantification of the PGC's percentage of ownership of each unit;

(3) Decommissioning cost study using the most currently available information on the cost of decommissioning each unit as set out in subsection (h)(2) of this section;

(4) Funding analysis identifying the expected amount of annual decommissioning funding determined as set out in subsection (i) of this section;

(5) Description of the method to be used to satisfy the state assurance obligation set forth in subsection (k) of this section, including any guarantee agreements, support agreements, credit agreements, or letters of credit or surety bonds;

(6) Agreements with an institutional trustee and investment manager to manage the PGC decommissioning trust that are consistent with this section and the terms and conditions required by the federal Nuclear Regulatory Commission; and

(7) Projected date for beginning funding of the PGC decommissioning trust, which must be prior to the commencement of initial fuel load and commercial operation of the nuclear generating unit.

(e) Commission Review.

(1) The commission staff will endeavor to recommend approval, amendment, or disapproval of an application setting annual decommissioning funding and financial agreements to implement the trust requirements within 120 days of receipt of a sufficient application, unless a hearing on the application is required.

(2) A request for hearing shall be filed by the date specified by the presiding officer which shall be no more than 60 days after the filing of the application. If a hearing is scheduled, the commission will endeavor to issue a final order within 180 days after the filing of a request for hearing.

(3) If no hearing is requested, the commission staff concludes that the application setting annual decommissioning funding and the trust agreements meet all requirements of this section, and the commission staff recommends approval, the application may be approved administratively or informally pursuant to §22.35 of this title (relating to Informal Disposition).

(4) If the commission staff recommends an amendment to the funding or trust agreements, within 14 days after filing of staff's recommendation, the PGC shall either file an amended application incorporating the staff's proposed amendments or request a hearing.

(5) If no hearing is requested and the PGC files an amended application that meets all requirements of this section and incorporates the staff recommendations, the application may be approved administratively or informally pursuant to §22.35 of this title.

(6) If the commission staff recommends denial and the PGC requests a hearing, or if the PGC does not file an amended application incorporating staff's recommendations within 14 days, the request shall be docketed as a contested case proceeding to approve, modify, or reject the application.

(f) Order. An order approving the application shall establish the amount of annual funding necessary to meet the decommissioning obligations for the nuclear generating unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission or over a shorter period of time at the election of the PGC.

(g) Annual Reports. On or before May 1 of each year, each PGC for which the commission has approved a funding amount and trust agreements under this section shall file an annual report for the prior year that provides the status of its PGC decommissioning trusts and any changes in the administration of the trusts, and an update of its ability to fund the PGC decommissioning trust. The report shall be on a form approved by the commission.

(h) Periodic Commission Review. At least once every three years the PGC shall file a decommissioning cost study and funding analysis or updates of previous studies using the most current information reasonably available to the PGC.

(1) The commission shall review the studies submitted by a PGC and other currently available information using the procedure provided in subsection (e) of this section.

(2) During the initial and each periodic review of decommissioning costs, the following information shall be provided:

(A) The decommissioning cost study and funding analysis accompanied by a report and testimony supporting the analysis and the requested annual funding amount. The funding analysis shall be based on the most current information reasonably available concerning the cost of decommissioning, an allowance for contingencies of not more than 10% of the cost of decommissioning, the balance of funds in the decommissioning trusts, anticipated escalation rates, the anticipated after-tax return on the funds in the trust, and other relevant factors. In no event will the cost estimate for basic radiological decommissioning be less than the minimum amount required by the federal Nuclear Regulatory Commission. The funding analysis shall be accompanied by a description of the assumptions used in the analysis and shall calculate the required annual funding amount necessary to ensure sufficient funds to decommission the nuclear generating plant at the end of its useful life.

(B) A demonstration that the decommissioning funds are being or will be invested prudently and in compliance with the investment guidelines in subsection (o) of this section.

(C) A demonstration of efforts to achieve optimum tax efficiency as defined in subsection (o)(2)(C) of this section, including, as applicable, maintenance of tax-exempt status or efforts to achieve "qualified" status in accordance with Internal Revenue Code §468A (or any successor thereto) with respect to the PGC's taxable PGC decommissioning trusts.

(D) Confirmation that the federal Nuclear Regulatory Commission either has made, or will make, a finding that there is reasonable assurance of the financial qualifications of the PGC, as required by federal regulations.

(E) Compliance with the state funding assurance obligation set forth in subsection (k) of this section.

(3) The commission shall ensure that the amount of annual decommissioning funding is consistent with the most recent decommissioning cost study and funding analysis, and that the PGC decommissioning trust is adequately funded. The PGC shall update its state assurance obligation to reflect changes in the annual decommissioning funding amount.

(i) Annual Decommissioning Funding Amount. The amount of annual decommissioning funding for a PGC decommissioning trust shall be an amount that, based on such factors as the balance of funds in the decommissioning trust, anticipated escalation rates, and anticipated after-tax return on funds in the decommissioning trust, will cover the cost of decommissioning a nuclear generating unit at the end of its operating license period. The amount shall be calculated based on the most current reasonably available information, consistent with the most recent decommissioning cost study, and divided by the remaining years of the license or a shorter period of time at the election of the PGC. The decommissioning cost study and funding analysis shall include the information required by subsection (h)(2)(A) of this section. The commission, on its own motion or on the motion of the commission staff, may initiate a proceeding to review the PGC's trust balances or the annual funding amount. The PGC shall provide any information required to conduct the review in accordance with the commission's procedural rules.

(j) Creditworthiness of PGC. For the purposes of the initial application under this section, creditworthiness of the PGC will be established primarily through satisfying the State Assurance Obligation as provided for in subsection (k) of this section.

(k) State Assurance Obligation. A PGC using a commission approved PGC decommissioning trust shall provide additional financial assurances that funds will be available to satisfy 16 years of annual decommissioning funding, based on the most recent annual decommissioning funding amount approved by the commission (the state assurance obligation amount). If the remaining funding contribution period is less than 16 years, the state assurance obligation will be based on the remaining number of years of annual decommissioning funding. The state assurance obligation amount will be the discounted value of annual decommissioning funding for the relevant period up to 16 years. Any arrangement for satisfying the state assurance obligation shall permit the trustee of a decommissioning trust to demand payment by any company holding funds or providing an assurance and require the company holding funds or providing an assurance to remit funds to the trust, in accordance with this section. The PGC shall include in its annual report a demonstration of compliance with the requirements of this subsection. The state assurance may be used to provide assurance required by state or federal law for other similar purposes relating to the operation of the facility, such as assurance for the funding to cover estimated operation costs, provided that adequate terms are included to replenish the amounts available under the assurance mechanism if funds are withdrawn for any such other purpose. The state assurance obligation may be accomplished by using one or more of the following methods at the election of the PGC, in the form approved by the commission:

(1) A PGC may satisfy the state assurance obligation by depositing the required amount of funds into an escrow account, a government fund, a nuclear decommissioning trust subject to the commission's investment standards set out in this title, or other type of acceptable agreement with an entity whose operations are regulated and examined by a federal or State agency.

(2) A PGC may satisfy the state assurance obligation by obtaining a written guarantee or financial support agreement from a direct or higher-tier parent corporation or a corporation with a substantial business relationship with the PGC. The guarantee or financial support agreement must be payable to the PGC decommissioning trust. The parent or supporting corporation must meet one of the following standards:

(A) The parent or supporting corporation must have:

(i) Tangible net worth of at least 10 times the state assurance amount, excluding the net book value of the nuclear units subject to the state assurance obligation;

(ii) Tangible net worth of at least $500 million;

(iii) Net working capital of at least 10 times the annual decommissioning funding amount; and

(iv) Assets located in the United States amounting to at least 90% of the total assets or at least 10 times the state assurance amount.

(B) The parent or supporting corporation must be otherwise financially qualified, based upon a finding by the commission that there is reasonable assurance that the parent or supporting corporation will be able to meet its obligations under the guarantee or other agreement.

(3) A PGC may satisfy the state assurance obligation by providing an adequate surety, insurance, or other guarantee method that meets the following minimum requirements:

(A) A guarantee that the state assurance obligation will be paid to the PGC decommissioning trust upon any default by the PGC in satisfying its annual funding obligation.

(B) A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to satisfy the state assurance obligation must contain the following conditions:

(i) The surety method or insurance must be open-ended, or, if written for a specified term, such as five years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the commission and the PGC of its intention not to renew. The surety or insurance must also provide that the full face amount will be paid to the PGC decommissioning trust automatically prior to the expiration without proof of forfeiture if the PGC fails to provide a replacement acceptable to the commission within 30 days after receipt of notification of cancellation.

(ii) The issuer must have a minimum rating of A- by Standard and Poor's Corporation, A3 by Moody's Investor's Service or the equivalent rating from A.M. Best.

(iii) The surety or insurance must be payable to the PGC decommissioning trust.

(4) A PGC may satisfy the state assurance obligation using any other method acceptable to the commission considering the relative risk factors and creditworthiness attributes of the applicant's financial characteristics to minimize exposure of retail electric customers to default by power generation companies.

(l) Annual Funding Obligation. A PGC using a PGC decommissioning trust shall remit annually to the fund the most recent annual decommissioning funding amount approved by the commission. A PGC shall make periodic payments according to a schedule submitted to the commission and shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of any failure to make a scheduled payment. The commission shall not consider a PGC to be in default of its annual funding obligation unless it fails to remit the necessary amounts within 60 days of notice of potential default. If a PGC is in default of its annual funding obligation, it shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of the default. If the PGC fails to cure its failure to make scheduled payment within 60 days of the commission notice, the commission may direct the trustee to request that any entity providing state assurance remit annually to the fund the most recent annual decommissioning funding amount approved by the commission in accordance with the schedule approved by the commission, including any payments that the PGC has failed to make, until the PGC is not in default or until the assurance is depleted.

(m) Funding Shortfall and Unspent Funds.

(1) If the PGC fails to meet its annual funding requirements and if the state assurance obligations are insufficient to meet the annual funding obligations or are otherwise not honored, the commission shall determine the manner in which any shortfall in the cost of decommissioning a nuclear generating unit shall be recovered from retail electric customers in the state. For retail electric customers of a municipally-owned utility or an electric cooperative that has an agreement to purchase power from a nuclear generating unit, the amount of the shortfall in the cost of decommissioning the nuclear generating unit that the customers are responsible for is limited to a portion of that shortfall that bears the same proportion to the total shortfall as the amount of electric power generated by the nuclear generating unit and purchased by the municipally-owned utility or electric cooperative bears to the total amount of power generated by the nuclear generating unit.

(2) Decommissioning funds that remain unspent after decommissioning of the nuclear generating unit is complete shall be returned to the PGC and the retail electric customers based on the proportionate amount, in real terms, that the PGC and retail electric customers paid into the fund.

(n) Administration of the PGC Decommissioning Trust Funds.

(1) The PGC shall assure that the PGC decommissioning trust is managed so that the funds are secure and earn a reasonable return; and that the funds provided from the PGC's operating revenues, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.

(2) The PGC shall appoint an institutional trustee and may appoint one or more investment managers. Unless otherwise specified in this section, the Texas Trust Code controls the administration and management of the PGC decommissioning trusts, except that the appointed trustees need not be qualified to exercise trust powers in Texas.

(3) The PGC shall retain the right to replace the trustee with or without cause. In appointing a trustee, the PGC shall have the following duties, which will be of a continuing nature:

(A) A duty to determine whether the trustee's fee schedule for administering the trust is reasonable, when compared to other institutional trustees rendering similar services, and meets the requirement of this section;

(B) A duty to investigate and determine whether the past administration of trusts by the trustee has been reasonable;

(C) A duty to investigate and determine whether the financial stability and strength of the trustee is adequate;

(D) A duty to investigate and determine whether the trustee has complied with the trust agreement and this section as it relates to trustees; and

(E) A duty to investigate any other factors that may bear on whether the trustee is suitable.

(4) The PGC shall retain the right to replace the investment manager with or without cause. In appointing an investment manager, the PGC shall have the following duties, which will be of a continuing nature:

(A) A duty to determine whether the investment manager's fee schedule for investment management services is reasonable, when compared to other such managers, and meets the requirement of this section;

(B) A duty to investigate and determine whether the past performance of the investment manager in managing investments has been reasonable;

(C) A duty to investigate and determine whether the financial stability and strength of the investment manager is adequate for purposes of liability;

(D) A duty to investigate and determine whether the investment manager has complied with the investment management agreement and this section as it relates to investments; and

(E) A duty to investigate any other factors which may bear on whether the investment manager is suitable.

(5) The PGC shall execute an agreement with the institutional trustee. The agreement shall be consistent with this section and may include additional restrictions on the trustee. A PGC shall not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the trustee.

(A) The interest or other earnings of the trust become part of the trust corpus.

(B) A trustee owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.

(C) A trustee shall have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.

(D) A trustee shall not lend funds from the PGC decommissioning trust to itself, its officers, or its directors.

(E) A trustee shall not invest or reinvest PGC decommissioning trusts in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a PGC decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than 5% of the fair market value of the assets of such mutual funds at the time of the investment.

(F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.

(6) The PGC shall execute an agreement with the investment manager. If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement. A PGC shall not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the manager.

(A) An investment manager shall, in investing and reinvesting the funds in the trust, comply with this section.

(B) The interest and other earnings of the trust become part of the trust corpus.

(C) An investment manager owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.

(D) An investment manager shall have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.

(E) An investment manager shall not invest funds from the PGC decommissioning trust with itself, its officers, or its directors.

(F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.

(7) Prior to executing an amended agreement with the institutional trustee or investment managers, the proposed amended agreement shall be filed at the commission for review along with a redlined version showing all changes made since the document was reviewed by the commission, and copies shall be provided to the commission's Legal Division and Rate Regulation Division or successor divisions.

(8) A copy of the trust agreement, any investment management agreement, and any amendments shall be filed with the commission within 30 days after the execution or modification of the agreement, and copies shall be provided to appropriate commission staff and the Office of Public Utility Counsel.

(o) Trust investments.

(1) The funds in a PGC decommissioning trust should be invested consistent with the following goals. The PGC may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.

(A) The funds should be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the trusts.

(B) In keeping with prudent investment practices, the portfolio of securities held in the PGC decommissioning trust shall be diversified to the extent reasonably feasible given the size of the trust.

(C) Asset allocation and the acceptable risk level of the portfolio should take into account market conditions, the time horizon remaining before the commencement and completion of decommissioning, and the funding status of the trust. While maintaining an acceptable risk level consistent with the goal in this section, the investment emphasis when the remaining life of the liability exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the trust should be on current income and the preservation of the fund's assets.

(D) In selecting investments, the impact of the investment on the portfolio's volatility and expected return net of fees, commissions, expenses and taxes should be considered.

(2) The following requirements shall apply to all PGC decommissioning trusts under this section. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.

(A) The total trustee and investment manager fees paid on an annual basis by the PGC for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

(B) For the purpose of this subsection, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the PGC decommissioning trusts contains securities with an aggregate value in excess of $20 million, it shall be diversified such that:

(i) no more than 5.0% of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and

(ii) the portfolio shall contain at least 20 different issues of securities. Municipal securities and real estate investments shall be diversified as to geographic region.

(C) The PGC may invest the decommissioning funds by means of qualified or unqualified PGC decommissioning trusts; however, the PGC shall, to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in "qualified" PGC decommissioning trusts, in accordance with the Internal Revenue Service Code §468A. The PGC shall avoid, whenever possible, the investment of taxable decommissioning funds in "unqualified" PGC decommissioning trusts.

(D) The use of derivative securities in the trust is limited to those whose purpose is to enhance returns of the trust without a corresponding increase in risk or to reduce risk of the portfolio. Derivatives may not be used to increase the value of the portfolio by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of Collateralized Mortgage Obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.

(E) The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for the trust is prohibited.

(F) The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.

(i) Except as noted in clause (ii) of this subparagraph, when the weighted average remaining life of the liability exceeds five years, the equity cap is 60%;

(ii) When the weighted average remaining life of the liability ranges between five years and 2.5 years, the equity cap shall be 30%.;

(iii) When the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be 0%. Additionally, during all years in which expenditures for decommissioning the nuclear units occur, the equity cap shall also be 0%;

(iv) For purposes of this subsection, the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each decommissioning outlay, where the weights are based on each year's expected decommissioning expenditures divided by the amount of the remaining liability in that year; and

(v) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the PGC shall, as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.

(vi) A PGC decommissioning trust shall not invest in securities issued by the PGC collecting the funds or any of its affiliates or any company providing security for the state assurance obligation; however, investments of a PGC decommissioning trust may include commingled funds that contain securities issued by the PGC if the securities of the PGC constitute no more than 5.0% of the fair market value of the assets of such commingled funds at the time of the investment.

(3) The following restrictions shall apply to all PGC decommissioning trusts. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.

(A) A PGC decommissioning trust shall not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below "BBB-" by Standard and Poor's Corporation or "Baa3" by Moody's Investor's Service) at the time that the securities are purchased and shall reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at any time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments shall have a quality level, measured quarterly, that is not below a "AA" grade by Standard and Poor's Corporation or "Aa2" by Moody's Investor's Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having a "AAA" rating.

(B) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor's or the quality rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index, assuming equal weighting of each ranked security in the index. If the quality rating, measured quarterly, falls below the minimum quality standard, the PGC shall as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level. A PGC decommissioning trust shall not invest in equity securities where the issuer has a capitalization of less than $100 million.

(C) The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by PGC decommissioning trusts include equity-indexed funds, actively managed equity funds, balanced funds, bond funds, and real estate investment trusts.

(i) The commingled funds should be selected consistent with the goals of this section.

(ii) In evaluating the appropriateness of a particular commingled fund, the PGC has the following duties, which shall be of a continuing nature:

(I) A duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;

(II) A duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and PGC decommissioning trust practices and standards; and

(III) A duty to investigate the reasonableness of the net after-tax return and risk of the fund relative to similar funds, and the appropriateness of the fund within the entire PGC decommissioning trust investment portfolio.

(iii) The payment of load fees shall be avoided.

(iv) Commingled funds focused on specific foreign countries, industries, or market sectors or concentrated in a few holdings shall be used only as necessary to balance the trust's overall investment portfolio mix.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706493
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 936-7223

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PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission proposes amendments to 16 TAC §§311.1, 311.101, 311.102, 311.104, 311.105, 311.108, 311.212, 311.214, 311.216, and 311.301. The Commission also proposes new §311.52 and §311.111. The amendments and new rules are proposed in conjunction with the Commission's rule review of Chapter 311 pursuant to Texas Government Code, §2001.039. Notice of this rule review was published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699).

The sections proposed for amendment relate to: the requirement to be licensed by the Commission; the specific responsibilities of owners, trainers, jockeys, and agents; the responsibilities that apply to all occupational licensees; and prohibitions on the use and possession of alcohol and drugs by occupational licensees. The new sections proposed for adoption relate to a new category of license for owners' spouses and the licensing requirements for jockey agents.

Charla Ann King, Executive Secretary for the Commission, has determined that for each year of the first five years the new and amended rules are in effect the following statements regarding the anticipated public benefit will apply:

The changes to §311.1 clarify that an individual who enters an animal into a race is participating in racing, and therefore must be licensed at the time of entry. This change will enhance the ability of the racing associations to orderly accept and process race entries.

Proposed new §311.52 authorizes an owner's spouse to apply for a Spouse's License, which is a new category of license. Currently, if an owner wants the spouse to accompany him or her on the backside, the owner or the trainer must sign in the spouse as a visitor at the security gate. This is inconvenient for the owner, the trainer, and security staff. By undergoing the licensing process, a spouse will have increased access to the backside, while also increasing security by undergoing a criminal background check and becoming subject to the Commission's rules and regulations.

The changes to §311.101 clarify the licensing requirements for owners by incorporating a reference to existing §313.301(a)(2), which requires a person to apply for an owner's license before claiming a horse, even though at that point the person may not be the owner of record of a properly registered horse. The changes also establish that a horse owner must be licensed one hour prior to post time of the first race on race day, which will reduce the number of late scratches that occur due to unlicensed owners attempting to enter horses into races. Finally, the changes improve the agency's responsiveness to the associations by allowing the stewards, instead of the executive secretary, to approve each association's Change of Trainer form.

The change to §311.102 establishes that a greyhound owner must be licensed one hour prior to post time of the first race on race day, which will reduce the number of late scratches that occur due to unlicensed owners attempting to enter horses into races.

The changes to §311.104 reduces redundancy by allowing the Commission to waive the written and/or the practical test if it determines that the applicant already holds a current trainer's license issued by another pari-mutuel racing jurisdiction. The changes also clarify the responsibilities of trainers by incorporating language from the Association of Racing Commissioners International's model rules.

The changes to §311.105 clarify the requirements for apprentice jockeys by making those requirements equivalent to the requirements established for jockeys. The changes also require that jockeys and apprentice jockeys have a certificate of proficiency issued by a licensed starter.

The changes to §311.108 will allow a trainer or owner to appoint a stable foreman or an assistant trainer as his or her authorized agent.

New §311.111 is proposed in conjunction with the proposed repeal of §313.408, which is published elsewhere within this issue of the *Texas Register*. The changes proposed in new §311.111 establish the licensing requirements for a jockey agent, and clarify the duties and responsibilities of the jockey agent.

The changes to §311.212 increase security by requiring each licensee to wear his or her license badge at all times while engaged in performing duties or while in a restricted area. The changes create a new exception for licensees who are performing duties as assistant starters.

The changes to §311.214 improve the Commission's ability to assist with the collection of debts owed by a licensee for services or supplies that are provided while the race animal is racing or in training at any licensed racing facility in Texas.

The changes to §311.216 improve safety by requiring licensees to wear A.S.T.M. approved safety helmets while mounted on a horse or holding a horse in a starting gate.

The changes to §311.301 improve the ability of agency staff to verify the legitimacy of medical prescriptions by requiring that prescriptions for dangerous drugs or controlled substances be issued by a physician who licensed in the United States and who is also authorized to prescribe such medications by the US Drug Enforcement Agency.

There are be no foreseeable implications relating to costs or revenues for state or local governments as a result of enforcing or administering the new rules or proposed amendments.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments or new rules.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.1

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category.

The amendment implements Texas Civil Statutes, Article 179e.

§311.1. Occupational Licenses.

(a) License Required.

(1) A person other than a patron may not participate in racing at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission. Any individual who enters an animal is deemed to be a participant in racing.

(2) A licensee may not employ a person to work at a racetrack at which pari-mutuel wagering is conducted unless the person has a valid license issued by the Commission.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706614
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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DIVISION 2. OTHER LICENSES

16 TAC §311.52

The new rule is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category.

The new rule implements Texas Civil Statutes, Article 179e.

§311.52. Spouse's License.

The spouse of a licensed owner may apply for a Spouse's License by completing the license application, a fingerprint card, and paying the license fee. The Spouse's License does not allow the spouse to participate in racing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706615
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §§311.101, 311.102, 311.104, 311.105, 311.108, 311.111

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.02, which requires the commission to adopt categories of licenses for the various occupations and specify the qualifications and experience required for licensing in each category.

The amendment implements Texas Civil Statutes, Article 179e.

§311.101. Horse Owners.

(a) General Provisions.

(1) The owner of a horse, as listed on the animal's registration paper, must obtain an owner's license from the Commission. Except as otherwise provided by §313.301(a)(2) of this title (relating to Officials and Rules of Horse Racing), a ~~[A]~~ person may not be licensed as an owner if the person is not the owner of record of a properly registered horse that the person intends to race in Texas. Except as otherwise provided by this subsection, the owner must be licensed one hour prior to the post time of the first race of the day in which the owner intends to race the animal.

(2) If the owner is not an individual, each individual who is a director, officer, or partner of the owner or who has an ownership interest in the horse of 5.0% or more must be licensed by the Commission.

(3) If the owner is not an individual, the owner must provide to the Commission:

(A) a sworn statement by the chief executive officer of the owner or by one of the partners of the owner that the officer or partner represents the owner and is responsible for the horse;

(B) a statement that the owner is authorized by law to do business in Texas; and

(C) a list of the names and addresses of all individuals having an ownership interest in the horse.

(4) If the owner is not an individual, the ownership entity must:

(A) designate a representative; or

(B) file an authorized agent form with the Commission and pay the prescribed fee.

(5) If the registered owner of a horse is a minor, a financial responsibility form approved by the executive secretary must be signed by the parent or guardian of the owner assuming financial responsibility for the debts incurred for the training and racing of the horse.

(b) - (c) (No change.)

(d) Change of Trainer. An owner may change the trainer of his or her horse registered at a licensed race meeting provided:

(1) the request to change trainers is submitted for approval to the stewards on a form provided by the association and approved by the stewards [~~executive secretary~~];

(2) the trainer from whom the horse is being transferred signs the form releasing custody of the horse;

(3) the trainer to whom the horse is being transferred signs the form accepting responsibility for the horses; and

(4) the stewards approve the transfer.

(e) - (g) (No change.)

§311.102. Greyhound Owners.

(a) General Provisions.

(1) Except as otherwise provided by this subsection, the owner of a greyhound, as listed on the animal's registration paper, must obtain an owner's license from the Commission. A person may not be licensed as an owner if the person is not the owner of record of a properly registered greyhound that the person intends to race in Texas. The owner must be licensed one hour prior to the post time of the first race of the day in which the owner intends to race the animal.

(2) If the owner is not an individual, each individual who is a director, officer, or partner of the owner or who has an ownership interest in the greyhound of 5.0% or more must be licensed by the Commission.

(3) If the owner is not an individual, the owner must provide to the Commission:

(A) a sworn statement by the chief executive officer of the owner or by one of the partners of the owner that the officer or partner represents the owner and is responsible for the greyhound;

(B) a statement that the owner is authorized by law to do business in Texas; and

(C) a list of the names and addresses of all individuals having an ownership interest in the greyhound.

(4) If the owner is not an individual, the ownership entity must:

(A) designate a representative; or

(B) file an authorized agent form with the Commission and pay the prescribed fee.

(5) If the registered owner of a greyhound is a minor, a financial responsibility form approved by the executive secretary must be signed by the parent or guardian of the owner assuming financial responsibility for the debts incurred for the training and racing of the greyhound.

(b) - (d) (No change.)

§311.104. Trainers.

(a) Licensing

(1) Except as otherwise provided by this subsection, a trainer must obtain a trainer's license before the trainer may enter a horse or greyhound in a race. A trainer may enter a horse or greyhound in a stakes race without first obtaining a license, but must obtain a license before the horse or greyhound may start in the stakes race. Except as otherwise provided by this section, to be licensed by the Commission as a trainer, a person must:

(A) be at least 18 years old;

(B) satisfactorily complete a written examination prescribed by the Commission; and

(C) satisfactorily complete a practical examination prescribed by the Commission and administered by the stewards or racing judges or designee of the stewards or racing judges.

(2) The standard for passing the written examination must be printed on the examination. An applicant who fails the examination may not take the examination again before the 60th day after the date the applicant failed the examination. The Commission may waive the requirement of a written and/or practical examination for a person who has a current license issued by another pari-mutuel racing jurisdiction. If a person for whom the examination requirement was waived demonstrates an inability to adequately perform the duties of a trainer, through excessive injuries, rulings, or other behavior, the stewards or racing judges may require the person to take the written examination. If such a person fails the examination, the stewards or racing judges shall suspend the person's license for 60 days with reinstatement contingent upon passing the written examination.

(3) A trainer must use the trainer's legal name to be licensed as a trainer. A trainer who is also an owner may use a stable name or kennel name in the capacity of owner.

(4) To be licensed as an assistant trainer, a person must qualify in all respects for a trainer's license and be in the employ of a licensed trainer. An assistant trainer's license carries all the privileges and responsibilities of a trainer's license.

(b) - (j) (No change.)

(k) Other Responsibilities - A trainer is responsible for:

(1) the condition and contents of stalls/kennels, tack rooms, feed rooms, and other areas which have been assigned by the association;

(2) maintaining the assigned stable/kennel area in a clean, neat and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable/kennel area;

(4) disclosure of the true and entire ownership of each animal in the trainer's care, custody or control. Any change in ownership shall be reported immediately to, and approved by, the stewards/judges and recorded by the racing secretary;

(5) training all animals owned wholly or in part by the trainer that are participating at the race meeting;

(6) ensuring that, at the time of arrival at a licensed racetrack, each animal in the trainer's care is accompanied by a valid health certificate/certificate of veterinary inspection;

(7) using the services of those veterinarians licensed by the Commission to attend animals that are on association grounds;

(8) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any animal in the trainer's charge;

(9) immediately reporting to the stewards/judges and the official veterinarian if the trainer knows, or has cause to believe, that a animal in the trainer's custody, care or control has received any prohibited drugs or medication;

(10) maintaining a knowledge of the medication record and status of all animals in the trainer's care;

(11) ensuring the fitness of a animal to perform creditably at the distance entered;

(12) ensuring that the trainer's horse are properly shod, bandaged and equipped; and

(13) notifying owners upon the revocation or suspension of the trainer's license. Upon application by the owner, the stewards/judges may approve the transfer of such animal to the care of another licensed trainer, and upon such approved transfer, such animal may be entered to race.

§311.105. Jockeys.

(a) License

(1) To be licensed as a jockey or apprentice jockey, an individual must be at least 16 years of age and provide proof of a satisfactory physical examination as described in subsection (b) of this section.

(2) An individual licensed as a jockey or apprentice jockey may not be licensed in another capacity.

(3) To be licensed as a jockey or apprentice jockey, an individual must have a certificate of proficiency issued by a starter licensed in this state or be currently licensed in another state as a jockey or apprentice jockey.

(b) Physical Examination.

(1) To be eligible to ride in a race, a jockey or apprentice jockey must have on file with the Commission proof of a satisfactory physical examination conducted during the 12-month period preceding the date of the race.

(2) An examination required by this section must be performed by a licensed physician and include tests for visual acuity and hearing.

(3) The Commission or the stewards may require a jockey or apprentice jockey to be reexamined at any time and may refuse to permit a jockey or apprentice jockey to ride until proof of a satisfactory examination is submitted.

(c) Apprentice Jockeys.

(1) An apprentice jockey is a rider of thoroughbreds who:

(A) is permitted to ride with the apprentice weight allowance in accordance with Chapter 313 of this title (relating to Officials and Rules of Horse Racing); and

(B) is otherwise qualified to be licensed as a jockey.

[~~(2) To be licensed as an apprentice jockey, an individual must submit with the application:~~]

[~~(A) proof of a satisfactory physical examination as required for a jockey's license: and~~]

[~~(B) a certificate of proficiency issued by a starter licensed in this state.~~]

(2) [~~(3)~~] The Rules relating to a jockey apply to apprentice jockeys.

(d) (No change.)

§311.108. Authorized Agent.

(a) To be appointed an authorized agent, an individual must be at least 18 years old and licensed as [~~either~~] an individual owner, stable foreman, assistant trainer, or a trainer. A written agency appointment authorizing him or her to act on behalf of a licensed owner or licensed trainer in racing matters not directly related to the care and training of horses must accompany the appointment. The authorization shall be on a form provided by the Commission and shall define the agent's powers and limits. The authorization must be signed by the principals and the agent.

(b) - (c) (No change.)

§311.111. Jockey Agent.

(a) Eligibility.

(1) An applicant for a license as a jockey agent shall:

(A) demonstrate to the stewards that the applicant has a contract for agency with at least one jockey who has been licensed by the Commission; and

(B) be qualified, as determined by the stewards or other Commission designee, by reason of experience, background and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(i) a written examination; or

(ii) an interview or oral examination.

(2) Applicants not previously licensed as a jockey agent shall be required to pass a written and oral examination.

(b) Limit on Contracts.

(1) During a thoroughbred or mixed race meet a jockey agent may serve as agent for no more than two jockeys and one apprentice jockey.

(2) During a quarter horse meet a jockey agent may serve as agent for no more than three jockeys.

(c) Responsibilities.

(1) A jockey agent shall not make or assist in making engagements for a jockey other than those the agent is licensed to represent.

(2) A jockey agent shall file written proof of all engagements and changes of engagements with the stewards.

(3) A jockey agent shall maintain current and accurate records of all engagements made, such records being subject to examination by the stewards at any time.

(4) A jockey agent may make entries for an owner or trainer with prior permission from the owner or trainer.

(5) When making an entry, a jockey agent shall sign the entry card and shall be responsible for the accuracy of the information provided on the entry card.

(d) Prohibited Areas. A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock or saddling enclosure during the hours of racing, unless permitted by the stewards.

(e) Agent Withdrawal (Termination). When any jockey agent withdraws from representation of a jockey, the jockey agent shall im-

mediately notify the stewards and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706616
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §§311.212, 311.214, 311.216

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The amendment implements Texas Civil Statutes, Article 179e.

§311.212. Duty to Wear Badge.

(a) Except as otherwise provided by this section, a licensee shall display his or her license badge in a conspicuous place on his or her body at all times that the licensee is engaged in performing duties or is in a restricted area. [~~on the association grounds.~~]

(b) This section does not apply to a licensee who is:

(1) performing duties as an assistant starter; or

[~~(1) not engaged in performing the licensee's duties and is in the grandstand area of the association grounds; or~~]

(2) mounted on a horse.

§311.214. Financial Responsibility.

(a) This section applies to the financial responsibility of licensees of the Commission for debts legally owed the transfer, purchase or lease of a race animal or for services or supplies relating to the care, transportation, or maintenance provided to [~~of~~] a race animal [~~participating~~] while racing or in training at a licensed facility [~~at a licensed race meeting~~] in this state. Services and supplies to which this section applies include, but are not limited to:

(1) veterinary services, medication, and veterinary supplies;

(2) transportation services;

(3) farrier services and supplies;

(4) feed and nutritional supplements; and

(5) racing supplies.

(b) - (e) (No change.)

§311.216. Conduct in Stable Area.

(a) - (b) (No change.)

(c) A licensee who is mounted on a horse or stable pony on association grounds must wear an A.S.T.M. approved safety helmet at all times. [~~galloping or ponying a horse or riding a horse in a race shall wear a properly fastened helmet, of a type approved by the executive secretary, at all times.~~]

(d) A licensee may not hold a horse in a starting gate unless the licensee wears properly fastened safety helmet approved by A.S.T.M. [~~of a type approved by the executive secretary.~~]

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706617
Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER D. ALCOHOL AND DRUG TESTING
DIVISION 1. DRUGS

16 TAC §311.301

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The amendment implements Texas Civil Statutes, Article 179e.

§311.301. Use and Possession Prohibited.

(a) Except as otherwise provided by this section, an occupational licensee may not, while performing duties required of the licensee, have present in his or her system a dangerous drug as defined by the Health and Safety Code, Chapter 483, or a controlled substance as defined by the Texas Controlled Substances Act, Health and Safety Code, Chapter 481. The Commission, stewards, or racing judges may decline to take disciplinary action against a licensee who violates this subsection if the Commission, stewards, or racing judges determine that:

(1) the licensee holds a current prescription for the drug or substance, which was issued by a physician licensed to practice in the United States and authorized to dispense or prescribe controlled substances as provided by 21 USC 801 et seq. and the physician is acting in the course of the physician's [~~licensed physician acting in the course of the physician's~~] professional practice;

(2) - (3) (No change.)

(b) An occupational licensee may not possess, while on association grounds, a dangerous drug as defined by the Health and Safety Code, Chapter 483, or a controlled substance as defined by the Texas Controlled Substances Act, Health and Safety Code, Chapter 481. This subsection does not apply to:

(1) a licensee who holds a current prescription for the drug or substance, which was issued by a physician licensed to practice in the United States and authorized to dispense or prescribe controlled substances as provided by 21 USC 801 et seq. and the physician is

acting in the course of the physician's [~~licensed physician acting the course of the physician's~~] professional practice; or

(2) a veterinarian licensed by the Commission who has obtained permission to possess a controlled substance or dangerous drug under §319.14 of this title (relating to Possession of Controlled Substances).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706618
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.111

The Texas Racing Commission proposes an amendment to 16 TAC §§313.111. Section 313.111 relates to age restrictions on horses' eligibility to start in pari-mutuel races.

The proposed changes to §313.111 will allow horses older than twelve years to compete if they have finished in the top three of a race within the previous twelve months, or if the board of stewards review the horse's prior performance and gives specific authorization for the horse to compete.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. King has determined that, for each year of the first five years the proposed amendment to §313.111 is in effect, the anticipated public benefit will be to expand the opportunities for older, yet still competitive, horses to race in Texas, while still protecting the health and safety of those horses.

The rule proposal will have no adverse economic effect on small or micro-businesses; therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§313.111. Age Restrictions.

(a) - (c) (No change.)

(d) A horse that is more than 12 years of age may not start in a pari-mutuel race in this state[,] unless: [~~the horse has won a race at an officially sanctioned pari-mutuel racetrack during the 12-month period preceding the race in which the horse is to start.~~]

(1) the horse has finished first, second, or third in an officially sanctioned pari-mutuel race during the 12-month period preceding the race in which the horse is to start; or

(2) upon due consideration of the horse's prior performance, the board of stewards has given specific authorization for the horse to start.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706607
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §313.408

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Racing Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Racing Commission (Commission) proposes the repeal of §313.408, Jockey Agents. Section 313.408 relates to the responsibilities of jockey agents.

The repeal of §313.408 is proposed in conjunction with the Commission's review of Chapter 311 as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699). With this repeal, the Commission is also proposing new §311.111, Jockey Agent, which is published elsewhere within this issue of the *Texas Register*.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that, for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Ms. King has determined that, for each year of the first five years the proposed repeal of §313.408, along with the adoption of §311.111, is in effect the anticipated public benefit will be to establish the eligibility requirements and clarify the responsibilities and duties of a jockey agent.

The proposed repeal will have no adverse economic effect on small or micro-businesses; therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed repeal.

All comments or questions regarding the proposed repeal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The repeal is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The proposed repeal implements Texas Civil Statutes, Article 179e.

§313.408. Jockey Agent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706612
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.363

The Texas Racing Commission proposes an amendment to 16 TAC §319.363, Testing for Total Carbon Dioxide. Section 319.363 relates to the testing of horses to detect illegal milkshaking, which is the illegal administration of a bicarbonate or other alkalinizing substance to enhance a race horse's performance.

The change to §319.363 will lower the level at which a violation occurs from 39 millimoles per liter in a race horse serum specimen to 37 millimoles per liter.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be the enhanced integrity of racing through the increased detection of milkshaking.

The rule will have no adverse economic effect or additional cost on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The amendment implements Texas Civil Statutes, Article 179e.

§319.363. Testing for Total Carbon Dioxide.

(a) Findings and Presumptions.

(1) The commission finds that a total carbon dioxide level of 37 [~~39~~] millimoles per liter or more in equine serum can be achieved only through the administration, by any means, of a bicarbonate-containing substance or other alkalinizing substance.

(2) A horse entered or participating in a race may not be administered a bicarbonate-containing substance or other alkalinizing substance which causes it to carry in its body an excess level of total carbon dioxide.

(3) A positive finding by a chemist of total carbon dioxide level at or above 37 [~~39~~] millimoles per liter in a race horse serum specimen is an excess level of total carbon dioxide and prima facie evidence that the race horse was administered a bicarbonate-containing substance or other alkalinizing substance in violation of this section.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200706621
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.407

The Texas Racing Commission proposes amendments to 16 TAC §321.407, Approval of Wagering on Simulcast Import Races. Section 321.407 relates to the process by which a racetrack association requests approval to import a simulcast race signal, and the factors the executive secretary considers in determining whether to approve the request.

The change to §321.407 addresses the minimum number of days in advance of the first race covered by a request that an association must submit its request for approval. The change reduces the minimum number of days from three to one.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be to provide the racetrack associations with more flexibility in scheduling their simulcast race schedules.

The rule will have no adverse economic effect on small businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Racing Act, Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

The amendment implements Texas Civil Statutes, Article 179e.

§321.407. Approval of Wagering on Simulcast Import Races.

(a) To receive approval to conduct pari-mutuel wagering on a simulcast import, an association must file a request for approval to import to the executive secretary on a form prescribed by the executive secretary. A request for approval to import a simulcast must be filed at least one day [~~three days~~] before the first simulcast race covered by the request.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706623
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1053

The Texas Education Agency (TEA) proposes new §102.1053, concerning service providers for the mathematics instructional coaches pilot program. The proposed new section would implement a requirement of the Texas Education Code (TEC), §21.4541, as added by House Bill 2237, 80th Texas Legislature, 2007, which requires the commissioner by rule to establish and implement a mathematics instructional coaches pilot program, including the approval of service providers.

Recognizing that far too many students in Texas middle, junior high, and high schools fail to meet state standards in the area of mathematics, the Texas Legislature provided legislation aimed at addressing this critical achievement issue. House Bill 2237, 80th Texas Legislature, 2007, added the TEC, §21.4541, establishing a pilot program under which participating school districts and campuses receive grants to provide assistance in developing the content knowledge and instructional expertise of mathematics teachers at the middle school, junior high school, or high school level. The legislation requires that the commissioner establish the pilot program and adopt rules for its implementation.

The proposed new 19 TAC Chapter 102, Subchapter EE, §102.1053, would begin implementation of the TEC, §21.4541, by establishing provisions relating to service providers approved to participate in the Mathematics Instructional Coaches Pilot Program. The proposed new rule would establish applicable definitions and specify criteria, guidelines, and procedures by which service providers will be identified and approved, including factors for continued participation of approved service providers. Service providers participating in the pilot program would be required to adhere to all procedural, reporting, and evaluation requirements established in rule and outlined in program requirements and assurances.

The TEA is currently gathering stakeholder input on the development of a rule proposal to address provisions relating to school district participation in the Mathematics Instructional Coaches Pilot Program and will propose such rule action after the development is complete. Future funding for the Mathematics Instructional Coaches Pilot Program is contingent on appropriations made by the legislature for that purpose.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Ms. Knaggs has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be the identification of service providers approved to participate in the pilot program to improve content area knowledge and instructional skills of secondary-level mathematics teachers. Improved preparation of

Texas secondary teachers would translate into increased learning and performance of students enrolled in Texas secondary schools. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section.

The public comment period on the proposal begins January 4, 2008, and ends February 3, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register.*

The new section is proposed under the Texas Education Code, §21.4541, which requires the commissioner by rule to establish and implement a mathematics instructional coaches pilot program, including the approval of service providers.

The new section implements the Texas Education Code, §21.4541.

§102.1053. Mathematics Instructional Coaches Pilot Program Service Providers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mathematics Instructional Coaches Pilot Program--A pilot program authorized by the Texas Education Code (TEC), §21.4541, under which participating school districts and campuses receive grants to provide assistance in developing the content knowledge and instructional expertise of teachers who instruct students in mathematics at the middle school, junior high school, or high school level.

(2) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(b) Conditions of operation. Each school district participating in the Mathematics Instructional Coaches Pilot Program must select a service provider to provide intensive instructional coaching and professional development from the list of eligible providers approved by the commissioner in accordance with subsection (c) of this section.

(c) Approved service providers.

(1) Eligible service providers. In addition to the entities described in the TEC, §21.4541(c), school districts and county departments of education are eligible to apply for approval.

(2) Identification and selection. In accordance with the TEC, §21.4541(c) and (d), the Texas Education Agency (TEA) will identify and select approved service providers through a request for qualifications (RFQ) process. Failure to adhere to established RFQ requirements and assurances will result in nonselection as a service provider.

(3) Renewal application. Each approved service provider must submit a separate renewal application every two years in order to maintain eligibility to participate in the Mathematics Instructional Coaches Pilot Program as an approved service provider.

(4) Continuation contingencies. Continuation as an approved service provider will be contingent upon the quantity and quality of services provided, as determined by the commissioner, in part by, but not limited to, progress related to the following:

(A) number of districts, campuses, and students served;

(B) number and frequency of professional development, coaching interventions, and other instructional and technical assistance services provided;

(C) student improvement in knowledge and skills as measured by standardized assessments, benchmark data, and other measurements deemed appropriate by the commissioner; and

(D) other performance measures determined by the commissioner.

(5) Renewal or revocation.

(A) The commissioner may deny renewal of or revoke participation in the Mathematics Instructional Coaches Pilot Program for a service provider based on the following factors:

(i) noncompliance with requirements and assurances outlined in the RFQ and/or the provisions of this section and the TEC, §21.4541;

(ii) lack of program success as evidenced by required progress reports and program data;

(iii) failure to meet performance standards specified in the RFQ;

(iv) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the service provider and the pilot program; or

(v) refusal to serve participants in the Mathematics Instructional Coaches Pilot Program.

(B) A decision by the commissioner to deny renewal or revoke approval of a service provider is final and may not be appealed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706622
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.26

The Texas Funeral Service Commission (commission) proposes an amendment to §203.26, concerning Funeral Directors and Embalmers License Requirements and Procedure.

The amendment is proposed in order to ensure all applicants submit to an FBI criminal background check.

O.C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that, for each year of the first five-year period the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651 of the Texas Occupations Code.

No other statutes, articles, or codes are affected by the proposal.

§203.26. Funeral Directors and Embalmers License Requirements and Procedure.

(a) (No change.)

(b) Initial License and Fees:

(1) - (4) (No change.)

(5) All applicants for an initial license must submit to an FBI background check.

(c) (No change.)

(d) Renewal Procedures and Conditions

(1) - (3) (No change.)

(4) A person whose license has been expired for one (1) year or more, may not renew the license, but may reinstate the license by meeting the following requirements:

(A) - (B) (No change.)

(C) completion of the mandatory continuing education requirements of [~~subsection~~] §203.30(f)(2) of this chapter [~~section~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706567

O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 936-2466

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22 TAC §203.38

The Texas Funeral Service Commission (commission) proposes an amendment to §203.38, relating to reinstatement of funeral director and/or embalmer licenses.

The amendment is proposed in order to revise the license descriptions that have been cancelled or revoked.

O.C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that, for each year of the first five-year period the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651 of the Texas Occupations Code.

No other statutes, articles, or codes are affected by the proposal.

§203.38. Reinstatement of Funeral Director and/or Embalmer Licenses.

(a) A person whose license to practice funeral directing and/or embalming has been cancelled or revoked[~~, whether by voluntary action or by disciplinary action of a civil court, commission or board,~~] may, after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order[~~, or unless no provision was made in the order for reinstatement~~]. This rule does not apply to licensees who let their licenses lapse for non-payment of renewal fees [~~or licensees against whom a cancellation or revocation proceeding is not pending before the Commission or Board or in any other jurisdiction~~].

(b) - (e) (No change.)

(f) In considering a petition for reinstatement, the Commission or Board may consider the petitioner's:

(1) - (3) (No change.)

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;

(5) (No change.)

(6) offers of employment as a funeral director and/or embalmer;

(7) - (9) (No change.)

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) (No change.)

(g) In considering a petition, the Commission or Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled or[,] revoked[, ~~restricted or surrendered and the impact the offense had upon the public health, safety, and welfare~~];

(2) the length of time since the petitioner's license was cancelled or[,] revoked [, ~~or restricted,~~] as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; and

(4) (No change.)

(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706566
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 936-2466

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22 TAC §203.40

The Texas Funeral Service Commission (commission) proposes new §203.40, relating to hardships regarding provisional licenses.

The new rule is proposed to allow persons whose provisional license has been cancelled for failure to comply due to a personal situation to petition the commission for reinstatement.

O.C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the proposed new section is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed rule.

Mr. Robbins also has determined that, for each year of the first five-year period the proposed new section is in effect, the public benefit anticipated as a result of enforcing the new rule will be to ensure that licensees have adequate time for rehabilitation prior to petitioning the commission for reinstatement in order that the public might be protected from unethical/unlawful funeral directors and/or embalmers. There will be no effect on large, small, or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The new section is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651 of the Texas Occupations Code.

No other statutes, articles, or codes are affected by the proposal.

§203.40. Provisional License; Hardship.

(a) Notwithstanding the provisions of §203.38(a) of this chapter, a person whose provisional license is cancelled for failure to comply with §203.6 of this chapter may within 60 days of such cancellation notify the Executive Director that the person wishes to petition the Commission for reinstatement in the provisional program by demonstrating that the failure to comply with §203.6 of this chapter was because of a personal situation that made such compliance unreasonable under the circumstances.

(b) Upon timely receipt of a notice, the Executive Director shall cause the matter of the person's petition for reinstatement to be placed on an agenda for consideration by the Commission.

(c) If the Commission determines that the person has made a compelling case for reinstatement in the provisional program by demonstrating that the failure to comply with §203.6 of this chapter was because of a personal situation that made such compliance unreasonable under the circumstances, the Commission may reinstate the person in the provisional program under terms and conditions that it may prescribe.

(d) If the Commission determines that the person has not made a compelling case for reinstatement in the provisional program, the Commission shall so find and the person's status with respect to licensure will be governed thereafter by the provisions of §203.38 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706570
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 936-2466

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance (Department) proposes amendments to §§5.4101, 5.4201, 5.4401, and 5.4501 concerning Texas Windstorm Insurance Association (TWIA) policy forms, endorsements, and manual rules. The Department is proposing to adopt by reference: (i) modifications to existing TWIA Dwelling and Commercial Policy forms, (ii) a new endorsement for use with the TWIA Dwelling Policy, (iii) modifications to two existing endorsements for TWIA Commercial and Dwelling Policies, (iv) modifications to the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy form, and (v) updates to the existing rules manual for TWIA; and to repeal an existing obsolete endorsement used with the TWIA Commercial Policy.

Amended §5.4101 is necessary to adopt modifications to existing TWIA Commercial and Dwelling Policies that would replace the current flood exclusion clause with a clarified flood exclusion clause (specifically excluding losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunami, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not) and replace the existing deductible clause with a clarified deductible clause that specifies that deductibles apply on a per item per occurrence basis. References to the Insurance Code in existing TWIA Commercial and Dwelling Policies are updated to conform to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017, effective April 1, 2007. Amended §5.4201 is necessary to adopt an optional new endorsement for the TWIA Dwelling Policy that provides for an annual increase in the dwelling limit of liability by a percentage established by a building cost index to be designated by TWIA. Amended §5.4201 is also necessary to update references to the Insurance Code in existing endorsements for TWIA Commercial and Dwelling Policies to conform to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017 and to delete an endorsement for the TWIA Commercial Policy (Form No. TWIA-65, Large Deductible Endorsement) that is obsolete following the approval of new commercial deductible options in Commissioner's Order No. 06-1110, issued October 16, 2006. Amended §5.4401 is necessary to adopt modifications to the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy that replace the current flood exclusion clause with a clarified flood exclusion clause (specifically excluding the same losses or damages as the proposed modified TWIA Dwelling and Commercial Policies) and change references to the Insurance Code to conform to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017. Amended §5.4501 is necessary to adopt updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits established by Commissioner's Order No. 06-1110 and delete outdated options and associated credits; clarify that commercial deductibles apply on a per item per occurrence basis; make known the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage established by a building cost index to be designated by TWIA; and designate as unavailable an obsolete Commercial Policy endorsement.

The purpose of TWIA, as stated in the Insurance Code §2210.001, is to provide windstorm and hail coverage to residents and businesses in the designated catastrophe areas that are unable to obtain such coverage in the voluntary market. The Insurance Code, §2210.351, requires that TWIA must file with the Department modifications of policy and endorsement forms that TWIA proposes to use and authorizes the Commissioner to approve, disapprove or modify the modifications of policy forms and endorsements in writing. The Insurance Code, §2210.008, requires that the Commissioner approve TWIA policy forms by order after notice and a hearing. The Insurance Code, §2210.351, also requires that TWIA must file with the Department each modification of the rules manual it proposes to use and authorizes the Commissioner to approve, modify, or disapprove in writing each modification of the rules manual submitted.

TWIA filed a petition (Ref. No. P-0407-03) with the Department on April 30, 2007, requesting that §5.4101 and §5.4401 be amended to adopt by reference modifications to the existing TWIA Dwelling and Commercial Policies and the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy to clarify the flood exclusion clause in each policy form.

TWIA filed a petition (Ref. No. P-0807-07) with the Department on August 15, 2007, requesting that §§5.4101, 5.4201, and 5.4401 be amended to adopt by reference modifications to the existing TWIA Dwelling Policy, the existing TWIA Commercial Policy, two existing endorsements (Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling)), and the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy to update a reference to the Government Code in each policy form, to update restatements of and references to the Insurance Code in the existing policy forms and endorsements, and to correct an obsolete reference to the Board of Insurance in the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy.

TWIA filed a petition (Ref. No. P-1007-14) with the Department on October 9, 2007, requesting that §5.4101 be amended to adopt by reference modifications to the existing TWIA Dwelling and Commercial Policies to clarify the deductible clause in each and that §5.4201 be amended to repeal an obsolete existing commercial endorsement (Form No. TWIA-65, Large Deductible Endorsement). The petition also requested that §5.4501 be amended to adopt by reference rules manual updates that reflect the commercial deductible options and associated credits adopted under Commissioner's Order No. 06-1110 and delete outdated options and associated credits (Rules Manual Section I, General Rules, subsection J. 2); clarify that commercial deductibles apply on a per item per occurrence basis (Rules Manual Section I, General Rules, subsection J. 2); and designate as unavailable an obsolete Commercial Policy endorsement (Form No. TWIA-65, Large Deductible Endorsement) (Rules Manual Section II, Policy Forms and Endorsements, subsection (b)(7)).

TWIA filed a petition (Ref. No. P-1007-16) with the Department on October 31, 2007, requesting that §5.4201 be amended to adopt by reference a new optional Dwelling Policy endorsement (Form No. TWIA 200- Adjusted Building Cost Endorsement), and §5.4501 be amended to adopt by reference a rules manual update that reflects the availability of the additional endorsement (Rules Manual Section II, Policy Forms and Endorsements, subsections (a)(11) and (c)(11)).

The proposed modifications of the flood exclusion clause clarify existing language in the TWIA Dwelling Policy, the TWIA Commercial Policy, and the Texas Special Mobile Home Windstorm and Hail Insurance Policy. The modified flood exclusion clause will specifically exclude any and all losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunami, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind

or not. The existing flood exclusion clauses in all three policies currently exclude flood losses, but do not contain as detailed a list of exclusions as the proposed modified clauses.

The proposed modification of the deductible clause in both the Commercial and Dwelling Policies clarifies that deductibles apply on a per item per occurrence basis. This modification reflects the current practice and is not a substantive change in the TWIA application of deductibles following a loss. In addition, Commissioner's Order No. 06-1110, dated October 16, 2006, addressed requests in an earlier TWIA petition (Ref. No. P-0806-12), by establishing three commercial deductible options of one percent, two percent, and five percent, based on the limit of insurance for the covered item and associated credits for each option. The TWIA Commercial Policy is also proposed to be updated by using a new value for a hypothetical deductible in two examples in the policy form illustrating the effect of coinsurance on coverage. The new value for a hypothetical deduction is taken from the current range of commercial deductibles recently adopted in Commissioner's Order No. 06-1110. A Commercial Policy endorsement (Form No. TWIA-65, Large Deductible Endorsement), is proposed to be repealed because it is obsolete following the revision in TWIA commercial deductible options. Updates to the existing TWIA rules manual are proposed to be adopted to include new commercial deductible options and a schedule of credits for the new options adopted by Commissioner's Order No. 06-1110, dated October 16, 2006 (Section I, General Rules, subsection J.2); to delete from the rules manual outdated commercial deductible options and schedules of credits for the outdated options (Section I, General Rules, subsection J.2); to provide that commercial deductibles apply per item per occurrence (Section I, General Rules, subsection J.2); and to advise that Commercial Policy endorsement Form No. TWIA-65 is no longer available (Section II, Policy Forms and Endorsements, subsection (b)(7)).

Additional proposed modifications to the existing TWIA Dwelling Policy, the existing TWIA Commercial Policy, and the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy update references to the Government Code, Chapter 418, concerning the declaration of a disaster and provide a lengthier disclosure of Insurance Code appeal procedures in each existing policy form. The lengthier disclosure of Insurance Code appeal procedures does not substantively change the legal procedures available to policyholders through the existing policies, but does update the Insurance Code references to conform to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017. A proposed modification of the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy deletes an obsolete reference to the Board of Insurance and replaces it with the Texas Department of Insurance. The proposed modifications of two existing endorsements (Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling)), do not change the substantive terms of the endorsements, but provide updated references to the Insurance Code Chapter 2210 to conform to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017.

A new optional dwelling endorsement (Form No. TWIA-200, Adjusted Building Cost Endorsement), proposed to be adopted by reference in amended §5.4201, provides for an annual increase in the dwelling limit of liability by a percentage established by a building cost index to be designated by TWIA. This endorsement will be provided, at the insured's option, at no additional premium. The resulting increases in limits are not mandatory and may be subsequently modified or rejected by the insured. An update to the existing TWIA rules manual is proposed to be adopted to reflect the availability of the new dwelling endorsement (Rules Manual Section II, Policy Forms and Endorsements, subsections (a) (11) and (c)(11)).

Amended §5.4101 proposes to adopt by reference, effective March 1, 2008, modifications to existing TWIA Dwelling and Commercial Policies to incorporate in each existing policy a clarified flood exclusion clause, a clarified deductible clause, and a lengthier disclosure of Insurance Code appeal procedures; to update in each existing policy a reference to the Government Code, Chapter 418; and to provide Insurance Code references in each existing policy conforming to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017. An additional modification to the existing TWIA Commercial Policy is also proposed to be adopted to use a new value for a hypothetical commercial deductible, taken from the range of commercial deductibles adopted in Commissioner's Order No. 06-1110, in two examples in the policy form illustrating the effect of coinsurance on coverage. No other modifications of existing TWIA Dwelling and Commercial policies are proposed to be adopted.

Amended §5.4201(3) proposes to delete existing subparagraph (D) because it adopts by reference existing commercial endorsement Form No. TWIA-65, Large Deductible Endorsement, made obsolete by Commissioner's Order No. 06-1110 adopting new commercial deductible options. Amended §5.4201(3) proposes to redesignate existing subparagraphs (E) - (K) as subparagraphs (D) - (J) because of the proposed deletion of existing subparagraph (D). Amended redesignated §5.4201(3)(J) and amended §5.4201(4)(H) propose to adopt by reference, effective March 1, 2008, modifications to two existing endorsements, Form No. TWIA-432, Extension of Coverage-Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage-Increased Cost of Construction (Dwelling), respectively, to conform the Insurance Code references in the endorsements to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017.

The proposal combines the listing of TWIA Dwelling Policy Endorsements that are in two separate paragraphs (§5.4201(4) and (5)) in the existing rule into a single listing under paragraph (4). Therefore, amended §5.4201 proposes to delete the caption in existing paragraph (5) because the text is a repetition of the text of existing §54201(4). Existing subparagraphs (A) - (H) of §5.4201(5) are proposed to be redesignated as subparagraphs (I) - (P) of amended §5.4201(4). Existing §5.4201(6) is proposed to be renumbered as amended §5.4201(5) because of the proposed deletion of existing §5.4201(5).

Section 5.4201(4)(Q) proposes to adopt by reference new Form No. TWIA-200, Adjusted Building Cost Endorsement, effective March 1, 2008.

No other modifications of existing TWIA endorsements are proposed to be adopted.

Amended §5.4401 proposes to adopt by reference, effective March 1, 2008, modifications to the existing Texas Special Mobile Windstorm and Hail Insurance Policy, incorporating in the policy a clarified flood exclusion clause, a lengthier disclosure of Insurance Code appeal procedures, and an updated reference to Government Code, Chapter 418; conforming Insurance Code references in the existing policy to the non-substantive code revision enacted by the 79th Legislature in H.B. 2017; and

replacing an obsolete reference in the policy to the Board of Insurance with the Texas Department of Insurance. No other modifications of the existing Texas Special Mobile Windstorm and Hail Insurance Policy are proposed to be adopted.

Amended §5.4501 proposes to adopt by reference, effective March 1, 2008, updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits adopted by Commissioner's Order No. 06-1110 and delete outdated options and associated credits (Rules Manual Section I, General Rules, subsection J.2); clarify that commercial deductibles apply on a per item per occurrence basis (Rules Manual Section I, General Rules, subsection J.2); make known the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage established by a building cost index to be designated by TWIA (Rules Manual Section II, Policy Forms and Endorsements, subsections (a)(11) and (c)(11)); and designate as unavailable an obsolete Commercial Policy endorsement (Rules Manual Section II, Policy Forms and Endorsements, subsection (b)(7)). Non-substantive changes in Rules Manual Section II are also proposed to be made to the lettered and numbered designations of endorsements listed after the additions of new subsections (a)(11) and (c)(13). No other updates or modifications to the existing TWIA rules manual are proposed to be adopted. A typographical error occurring in the second sentence of amended §5.4501 is proposed to be corrected by replacing the existing word manuals with the word manual.

Copies of proposed modified policy forms, the proposed modified endorsements for extension of coverage due to increased cost of construction for the Dwelling and Commercial Policies, the existing Commercial Policy endorsement proposed to be repealed, the Dwelling Policy endorsement proposed to be added, and the proposed updates to the rules manual, may be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, (512) 322-2266.

FISCAL NOTE. Marilyn Hamilton, Associate Commissioner of the Property and Casualty Program, has determined that, for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has further determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be the offering of windstorm and hail policy forms that more clearly state the coverage provided by and excluded under TWIA policies. It is particularly important that TWIA policy forms incorporate a clarified flood damage clause; so that policyholders fully understand that the risk of flood damage is not covered under the TWIA policies, and may consider the separate purchase of federal flood insurance if available. The modified language in the deductible clauses of the Dwelling and Commercial Policies unambiguously states that deductibles apply on a per item per occurrence basis. The updating of legal references in the policy forms and endorsements will assist policyholders and agents locate and review applicable law. The adoption of the proposed dwelling endorsement and the amendment of the rules manual to reflect the availability of the new endorsement will assist policyholders and agents maintain adequate windstorm and hail insurance coverage. The amendment to the rules manual will also assist agents by providing a correct schedule of credits for current commercial policy deductible options. Clarifying through modified policy forms, endorsements, and the rules manual what is covered and what is excluded under TWIA policies benefits TWIA policyholders by enabling TWIA to pay only for losses that were intended to be covered by its policies and eliminating unnecessary costs that could lead to higher rates. TWIA members also benefit by avoiding assessments for losses not intended to be covered by TWIA policies, and the general revenue of the state avoids the loss of premium taxes. The proposed modifications will assist TWIA to continue to achieve its statutory purpose of providing a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state.

TWIA will incur costs for printing and distributing the modified policies and endorsements; however, TWIA has agreed to bear such costs by filing the petitions. Under proposed §5.4501, TWIA will not incur the costs in printing and distributing the updated pages of the rules manual because the rules manual is printed and distributed by ICT Services (ICT) and Wolters Kluwer Financial Services. Agents who utilize the rules manual subscribe to it directly from one of these sources. ICT charges $15 for new subscriptions and $15 to renew a subscription which includes providing the rules manual and all updates to the rules manual. Wolters Kluwer Financial Services charges $109 for new subscriptions and $85 to renew a subscription which includes providing the rules manual and all updates to the rules manual. ICT and Wolters Kluwer have informed the Department that they will print and distribute the updated rules manual pages to their subscribers at no additional charge.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code, §2006.002(c), requires that, if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an Economic Impact Statement that assesses the potential impact of the proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. The Government Code, §2006.001(a)(2), defines small business as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code, §2006.001(a)(1), defines micro business similarly to small business but specifies that such a business may not have more than 20 employees. The Government Code, §2006.001(a)(1), does not specify a maximum level of gross receipts for a micro business.

TWIA does not meet the definition of a small business under the Government Code, §2006.001(a)(2). TWIA is an association . . . composed of all property insurers authorized to engage in the business of property insurance in this state, formed under the authority of the Insurance Code, §2210.051. It is not a corporation, partnership, nor sole proprietorship. It is not formed for the purpose of making a profit, but to provide a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state, as mandated by the Insurance Code, §2210.001. Under the Insurance Code, §2210.056, the net earnings of TWIA may not inure to the benefit of private shareholders or individuals; and the assets of TWIA may not be used other than to satisfy claims on policies, make investments authorized under applicable

law, pay reasonable and necessary administrative expenses, and purchase reinsurance or prepare for or mitigate the effects of catastrophic natural events. Under the Insurance Code, §2210.452, all premium and other revenue of TWIA in excess of incurred losses and operating expenses is paid to a catastrophe reserve trust fund or a reinsurance program approved by the Commissioner. Further, under the Insurance Code, §2210.056 and §2210.452, on the dissolution of TWIA, all assets revert to the state. TWIA is not independently owned and operated. In addition to not being owned by its members, under the Insurance Code, §2210.101 and §2210.102, TWIA operates with a nine member board of directors responsible and accountable to the Commissioner. TWIA provides windstorm and hail insurance according to a plan of operation as specified by the Insurance Code, §2210.152 and adopted by the Commissioner by rule pursuant to the Insurance Code, §2210.151. Further, TWIA has approximately 150 employees (including employees who are providing services by contract to the Fair Access to Insurance Requirements (FAIR) Plan) and net receipts well over $6 million. An analysis of the rule's economic impact on TWIA is not statutorily required.

Agents who write windstorm and hail insurance through TWIA may meet the definition of small business or micro business in the Government Code, §2006.001. As previously noted, costs for printing and distributing the modified policy forms and endorsements will be borne by TWIA. There will be no new costs to agents to obtain the updated rules manual because updates to the rules manual are included in the cost of a subscription to ICT Services or Wolters Kluwer Financial Services. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the rule proposal; therefore, preparation of an Economic Impact Statement and Regulatory Flexibility Analysis is not statutorily required.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 4, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2679, scheduled for January 29, 2008, at 9:30 a.m., in Room 100 of the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

DIVISION 3. POLICY FORMS

28 TAC §5.4101

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code, Chapter 2210, and §36.001. The Insurance Code, §2210.008, authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code, Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code, §2210.351(a), authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code, §2210.351(b), requires that proposed policy and endorsement forms must be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans, and each modification of those items that TWIA proposes to use. The Insurance Code, §36.001, authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 2210.

§5.4101. TWIA Dwelling and Commercial Policy Forms.

The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy and the Texas Windstorm Insurance Association Commercial Policy as amended effective March 1, 2008 [~~July 15, 2006~~]. Specimen copies of these policy forms are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-6327

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DIVISION 4. ENDORSEMENTS

28 TAC §5.4201

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code, Chapter 2210, and §36.001. The Insurance Code, §2210.008, authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code, Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code, §2210.351(a), authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code, §2210.351(b), requires that proposed policy and endorsement forms must be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans, and each modification of those items that TWIA proposes to use. The Insurance Code, §36.001, authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 2210.

§5.4201. Endorsements for Use with TWIA Policy Forms.

The Texas Department of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The endorsement forms are more specifically identified as follows.

(1) - (2) (No change.)

(3) Endorsements for use with the TWIA Commercial Policy.

(A) Form No. TWIA-18, Builders Risk--Stated Value Form, effective June 15, 1999.

(B) Form No. TWIA-21, Builders Risk--Actual Completed Value Form, effective June 15, 1999.

(C) Form No. TWIA-26, Church Form, effective June 15, 1999.

~~[(D) Form No. TWIA-65, Large Deductible Endorsement, effective June 15, 1999.]~~

(D) [~~(E)~~] Form No. TWIA-115, Lumber Form--Specific--Retail Yard, effective June 15, 1999.

(E) [~~(F)~~] Form No. TWIA-164, Replacement Cost Endorsement, effective June 15, 1999.

(F) [~~(G)~~] Form No. TWIA-176, School Form, effective June 15, 1999.

(G) [~~(H)~~] Form No. TWIA-280, Condominium Property Form--Additional Policy Provisions, effective June 15, 1999.

(H) [~~(I)~~] Form No. TWIA-282, Condominium Property Form--Additional Property Provisions, amended June 15, 1999.

(I) [~~(J)~~] Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

(J) [~~(K)~~] Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) effective March 1, 2008 [~~July 15, 2006~~].

(4) Endorsements for use with the TWIA Dwelling Policy.

(A) Form No. TWIA-310, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-315, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-320, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-325, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-326, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-328, Extensions of Coverage, amended June 15, 1999.

(G) Form No. TWIA-410, Conversion to Farm and Ranch Dwelling Policy, effective June 15, 1999.

(H) Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling), effective March 1, 2008 [~~July 15, 2006~~].

~~[(5) Endorsements for use with the TWIA Dwelling Policy.]~~

(I) [~~(A)~~] Form No. TWIA-330, Extensions of Coverage, amended June 15, 1999.

(J) [~~(B)~~] Form No. TWIA-335, Extensions of Coverage, amended June 15, 1999.

(K) [~~(C)~~] Form No. TWIA-340, Extensions of Coverage, amended June 15, 1999.

(L) [~~(D)~~] Form No. TWIA-345, Extensions of Coverage, amended June 15, 1999.

(M) [~~(E)~~] Form No. TWIA-350, Extensions of Coverage, amended June 15, 1999.

(N) [~~(F)~~] Form No. TWIA-365, Replacement Cost Endorsement--Personal Property, amended June 15, 1999.

(O) [~~(G)~~] Form No. TWIA-400, Actual Cash Value--Roofs (One or Two Family Dwellings), effective June 15, 1999.

(P) [~~(H)~~] Form No. TWIA-420, Exclusion of Cosmetic Damage to Roof Coverings Caused by Hail, effective June 15, 1999.

(Q) Form No. TWIA-200, Adjusted Building Cost Endorsement, effective March 1, 2008.

(5) [~~(6)~~] Endorsements for use with the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-29, Mandatory Endorsement, amended June 15, 1999.

(B) Form No. TWIA-570, Mobile Home Percentage Deductible Clause (Coastal Area), amended June 15, 1999.

(C) Form No. TWIA-575, Mobile Home Percentage Deductible Clause (Beach Area), amended June 15, 1999.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene C. Jarmon
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For further information, please call: (512) 463-6327

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DIVISION 5. TEXAS SPECIAL MOBILE HOME WINDSTORM AND HAIL INSURANCE POLICY

28 TAC §5.4401

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code, Chapter 2210, and §36.001. The Insurance Code, §2210.008, authorizes the Commissioner, after notice and hearing, to issue any orders which the Commis-

sioner considers necessary to carry out the purposes of the Insurance Code, Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code, §2210.351(a), authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code, §2210.351(b), requires that proposed policy and endorsement forms must be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans, and each modification of those items that TWIA proposes to use. The Insurance Code, §36.001, authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code, Chapter 2210.

§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage.

The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage as amended effective March 1, 2008 [~~July 15, 2006~~]. Specimen copies of this policy are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC §5.4501

STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code, Chapter 2210, and §36.001. The Insurance Code, §2210.008, authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code, Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code, §2210.351(a), authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code, §2210.351(b), requires that proposed policy and endorsement forms must be filed with the Department along with proposed manuals of classifications, rules, rates, rating plans, and each modification of those items that TWIA proposes to use. The Insurance Code, §36.001, authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code, Chapter 2210.

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective March 1, 2008 [~~July 15, 2006~~]. A specimen copy of the rules manual [~~manuals~~] is available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. TERMINATION OF FINANCIAL ASSURANCE FOR UNDERGROUND STORAGE TANKS

28 TAC §5.9101 - 5.9107

The Texas Department of Insurance proposes new Subchapter K, §§5.9101 - 5.9107, concerning the required notice of the cancellation or non-renewal of insurance or other financial assurance for an underground storage tank. The proposal implements the new provisions in the Water Code §26.352 that require an insurer or other entity providing financial assurance for the purposes of meeting the statutory financial responsibility requirements for owners or operators of underground storage tanks provide notice to the Texas Commission on Environmental Quality (TCEQ) within 30 days after termination of insurance or other financial assurance. The requirement to provide such notice was enacted by amendments to the Water Code §26.352 in HB 1956, 80th Legislature, effective September 1, 2007. The TCEQ regulates underground storage tanks pursuant to the Water Code §§26.341 - 26.367.

The Water Code §26.352(a) requires the TCEQ to establish requirements for owners or operators of underground storage tanks to maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank. New subsection (e-1) of the Water Code §26.352 mandates that the notice be provided to the TCEQ and requires the Department to adopt rules to implement and enforce the new termination notice requirements. New subsection (e-1) of Water Code §26.352 also requires the insurance company or other entity providing financial assurance to mail, fax, or email the notice of the cancellation or non-renewal to the TCEQ not later than the 30th day after the date the coverage terminates.

Under the proposal, the specific new notice requirements apply only to notices required to be issued under the Water Code §26.352(e-1) that are issued on or after April 1, 2008. In accordance with HB 1956, insurers and other entities providing financial assurance for underground storage tanks are required to comply with the general notice provisions of the Water Code §26.352(e-1) for insurance or other financial assurance terminating after January 1, 2008.

The proposed new sections are necessary to implement the new termination notice requirements.

Proposed new §5.9101 states the purpose of the new sections, which is to specify the requirements and procedures for insurers or other entities providing financial assurance for the purposes of meeting financial responsibility requirements for underground storage tank owners or operators under the Water Code §26.352 to notify the TCEQ after insurance or other financial assurance for an underground storage tank is canceled or not renewed.

Proposed new §5.9102 provides definitions for financial assurance and insurer. Financial assurance is defined as a financial instrument used to comply with financial responsibility requirements established under the Water Code §26.352; insurer is defined as an entity operating under the Insurance Code providing insurance or other financial assurance to an owner or operator of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352, including all entities operating under the Insurance Code Chapters 941 (Lloyd's plans), 942 (reciprocals and interinsurance exchanges), 981 (surplus lines insurers), and 2201 (risk retention groups and purchasing groups).

Subsection (a) of proposed new §5.9103 provides that the new sections apply to all insurers providing insurance or other financial assurance to an owner or operator of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352. Subsection (b) of proposed new §5.9103 provides that all provisions of the subchapter except §5.9107 (relating to Disciplinary Actions by the Commissioner of Insurance) apply to other entities providing financial assurance for the owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352. Referral to the Attorney General may be made for disciplinary actions against the small percentage of other entities providing financial assurance for the owners or operators of underground storage tanks. Proposed new §5.9103(c) provides that the specific new notice requirements of §5.9104 and §5.9105 shall apply only to notices required to be issued on and after April 1, 2008.

Proposed new §5.9104 addresses the content of the termination notice. Subsection (a) of proposed new §5.9104 requires that an insurer or other entity providing financial assurance for the owners or operators of underground storage tanks provide notice to the TCEQ of the termination of the insurance or other financial assurance. Subsection (a) of proposed new §5.9104 also specifies the information that must be included with the notice of termination, including the effective date that the insurance or financial assurance was cancelled or non-renewed and the reason for the termination. Subsection (b) of proposed new §5.9104 requires that the notice to the TCEQ must be accurate and complete.

Proposed new §5.9105 specifies the procedures for submission of the notice. Proposed new §5.9105(a) requires that the insurer, or other entity providing, holding, or maintaining financial assurance for an underground storage tank must send the notice of termination not later than the 30th day after the date the coverage terminates. Proposed new §5.9105(b) requires that the insurer, or other entity providing financial assurance, mail, fax or email the notice to the TCEQ, and specifies mail, fax and email listings for the provision of such notice. Proposed new §5.9106 specifies requirements and procedures in the event of rescindment of the notice of termination.

Proposed new §5.9106(a) requires that an insurer or other entity providing financial assurance that rescinds a notice of termination provided to the TCEQ must send written notice to the TCEQ of such rescindment in accordance with §5.9105(b) not later than the 10th day after the termination is rescinded. Proposed new §5.9106(b) requires that the notice of rescindment include a copy of the notice under §5.9104 that is being rescinded or the policy number or other financial assurance identification number and the facility identification number(s) assigned by the TCEQ for the underground storage tank(s) insured or otherwise financially assured. Proposed new §5.9106(c) requires that the notice of rescindment must be accurate and contain all the information required under §5.9106(b). Proposed new §5.9107 specifies the possible disciplinary actions by the Commissioner of Insurance for violations of the statutory and rule requirements.

FISCAL NOTE. Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of these rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has further determined that the public benefit of the new sections is that they will aid the TCEQ in administering subsections (a), (e), and (e-1) of the Water Code §26.352. Subsection (a) of the Water Code §26.352 authorizes the TCEQ to establish by rule requirements for tank owners or operators to maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases from underground storage tanks. New subsection (e) of the Water Code §26.352 requires that an owner or operator of an underground storage tank submit annually proof that the owner or operator maintains financial responsibility as required by §26.352(a). However, some owners or operators of underground storage tanks are not taking the necessary measures to ensure that they are financially responsible for the costs of taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks. A number of owners or operators of underground storage tanks have terminated their insurance coverage or financial assurance, forcing the state to assume the costs of taking corrective action for leaks from underground storage tanks not insured or otherwise financially assured by the owners and operators. New subsection (e-1) of the Water Code §26.352 requires that an insurance company or other entity that provides financial assurance to an owner or operator of an underground storage tank notify the TCEQ if the insurance coverage or other financial assurance is canceled or not renewed not later than the 30th day after the date the coverage terminates. The proposal will provide specific guidance regarding the procedures to follow in notifying the TCEQ if the insurance or other financial assurance is canceled or not renewed, and will thereby provide necessary information to assist the TCEQ in enforcing the statutory requirements for

maintenance of insurance coverage or other financial assurance for owners or operators of underground storage tanks before a costly accidental release occurs from an underground storage tank not insured or otherwise financially assured by the owner or operator.

The cost for insurers or other entities providing financial assurance for underground storage tanks required to comply with the proposed sections will be based on (i) the cost of labor in identifying insurance or other financial assurance for underground storage tanks that is canceled or not renewed; (ii) the cost of labor in reprogramming existing systems to meet the requirements of the proposed sections; and (iii) the cost of providing notice of the termination of insurance or other financial assurance for underground storage tanks to the TCEQ. These costs, however, are the result of the legislative enactment of HB 1956, and not the result of the adoption, enforcement, or administration of the proposed sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department and the TCEQ have determined that there are no small or micro businesses required to comply with the proposed rule. This determination is based on a compilation of profiles of all known insurers or other entities providing financial assurance for underground storage tanks. The Department and the TCEQ are not aware, nor have any knowledge, of any entity insuring or providing financial assurance for underground storage tanks that has fewer than 100 employees or less than $6 million in annual gross receipts. Further, any costs that are incurred by any business, regardless of size, that is required to comply with the proposal are the result of the enactment of HB 1956, and not the result of the adoption, enforcement, or administration of the proposed amendments. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 4, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of Chief Clerk prior to the close of the public comment period. No hearing will be held unless requested. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under the Water Code §26.352(e-1) and the Insurance Code §36.001. Subsection (e-1) of the Water Code §26.352 requires that an insurance company or other entity that provides insurance coverage or another form of financial assurance to an owner or operator of an underground storage tank for purposes of the Water Code §26.352 notify the TCEQ if the insurance coverage or other financial assurance is canceled or not renewed not later than the 30th day after the date the coverage terminates. Subsection (e-1) of the Water Code §26.352 further requires that the Department adopt rules to implement and enforce this subsection. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by the proposal: Water Code §26.352.

§5.9101. Purpose.

In accordance with the Water Code §26.352(e-1), this subchapter specifies the requirements and procedures for an insurer or other entity providing financial assurance for the purposes of meeting financial responsibility requirements for underground storage tank owners or operators under the Water Code §26.352 to provide notice to the Texas Commission on Environmental Quality (TCEQ) after insurance or other financial assurance for an underground storage tank is canceled or not renewed.

§5.9102. Definitions.

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

(1) Financial assurance--A financial instrument that as provided by rules adopted by the TCEQ may be used to comply with financial responsibility requirements established under the Water Code §26.352.

(2) Insurer--An entity operating under the Insurance Code providing insurance or other financial assurance to an owner or operator of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352, including all entities operating under the Insurance Code Chapters 941 (Lloyd's plans), 942 (reciprocals and interinsurance exchanges), 981 (surplus lines insurers), and 2201 (risk retention groups and purchasing groups).

(3) TCEQ--Texas Commission on Environmental Quality.

§5.9103. Applicability.

(a) This subchapter is applicable to all insurers providing insurance or other financial assurance to owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352.

(b) All provisions of this subchapter except §5.9107 (relating to Disciplinary Actions by the Commissioner of Insurance) also apply to any other entity providing, holding, or maintaining financial assurance for the owners or operators of underground storage tanks for the purposes of meeting financial responsibility requirements established under the Water Code §26.352.

(c) This subchapter applies only to notices required to be issued under the Water Code §26.352(e-1) and that are issued on or after April 1, 2008, regardless of when the insurance policy or other form of financial assurance was issued or created.

§5.9104. Content of Notice.

(a) Pursuant to the Water Code §26.352(e-1), an insurer or other entity that provides insurance coverage or another form of financial assurance to an owner or operator of an underground storage tank for the purpose of showing or maintaining evidence of financial responsibility must send written notice to the TCEQ if the insurance coverage or other financial assurance for an underground storage tank is canceled or not renewed as provided in §5.9105 of this title (relating to Submission of Notice). The notice must contain the following information:

(1) the name of the insured, or assured, as appropriate;

(2) the street address or specific location of each underground storage tank for which insurance or financial assurance is being canceled or not renewed;

(3) the business address of the named insured or assured;

(4) the name, address, and telephone number of the insurer or other entity providing, holding, or maintaining the financial assurance;

(5) the effective date that the insurance coverage or financial assurance was terminated;

(6) the insurer's or other entity's reason(s) for the cancellation or non-renewal of the insurance or other financial assurance;

(7) the policy number or other financial assurance identification number; and

(8) the facility identification number assigned by the TCEQ for each underground storage tank that insurance coverage or other financial assurance was canceled or not renewed.

(b) The notice must be accurate and contain all the information required under subsection (a) of this section. It is the sole responsibility of the insurer or other entity providing, holding, or maintaining financial assurance to obtain and maintain the information necessary to complete the required notice.

§5.9105. Submission of Notice.

(a) As provided under the Water Code §26.352(e-1), the insurer or other entity providing, holding, or maintaining financial assurance for an underground storage tank must send the notice required pursuant to the Water Code §26.352(e-1) and §5.9104(a) and (c) (relating to Content of Notice) not later than the 30th day after the date the coverage terminates.

(b) As provided under the Water Code §26.352(e-1), the insurer, or other entity providing, holding, or maintaining financial assurance for an underground storage tank shall mail, fax, or email the notice required under the Water Code §26.352(e-1) and §5.9104(a) and (c) of this subchapter (relating to Content of Notice) to the TCEQ. The notice must be submitted to one of the following addresses, or as otherwise directed by the executive director of the TCEQ:

(1) TCEQ, Financial Assurance Cancellations, MC-234, P.O. Box 13087, Austin, Texas 78711-3087 (mail);

(2) TCEQ, Financial Assurance Cancellations, MC-234, 12100 Park 35 Circle, Austin, Texas 78753 (overnight delivery);

(3) (512) 239-6242 (fax); or

(4) txustfa@tceq.state.tx.us (email).

§5.9106. Rescindment of Cancellation or Non-Renewal.

(a) An insurer or other entity that rescinds a cancellation or non-renewal noticed to TCEQ pursuant to the Water Code §26.352(e-1) and §5.9104 of this subchapter (relating to Content of Notice) must send written notice to the TCEQ of such rescindment in accordance with §5.9105(b) of this subchapter (relating to Submission of Notice) not later than the 10th day after the cancellation or non-renewal is rescinded.

(b) The notice of rescindment required in subsection (a) of this section must include:

(1) a copy of the notice under §5.9104 of this subchapter that is being rescinded; or

(2) both of the following:

(A) the policy number or other financial assurance identification number, and

(B) the facility identification number(s) assigned by the TCEQ for the underground storage tank(s) insured or otherwise financially assured.

(c) The notice required by subsection (a) of this section must be accurate and contain all the information required under subsection (b) of this section. It is the sole responsibility of the insurer or other entity providing, holding, or maintaining financial assurance to obtain and maintain the information necessary to complete the required notice.

§5.9107. Disciplinary Actions by the Commissioner of Insurance.

The Commissioner of Insurance may, after notice and an opportunity for a hearing, discipline an insurer under the Insurance Code Chapters 82, 83, 84, and 2201 for violations of the requirements of this subchapter and any other applicable law the Commissioner determines the insurer to be in violation of, or with which the insurer has failed to comply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Department of Insurance
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.29

The General Land Office (GLO) proposes amendments to §15.29 relating to Certification Status of Village of Jamaica Beach Dune Protection and Beach Access Plan (Plan). The GLO proposes an amendment to §15.29 to the certification status of the Plan, adopted on August 16, 1993, and amended by the Village of Jamaica Beach (Village), on December 6, 1993. The amendment to §15.29 proposes to certify as consistent with state law the amendments to the Village Plan that were adopted by Jamaica Beach on September 17, 2007, by Ordinance No.

2007-6. The amendment includes a variance requested by the Village relating to the use of use of unreinforced fibrecrete in four feet by four feet section in the area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation. Copies of the local government dune protection and beach access plan and any amendments to those plans are available from the City Secretary, Teri White, who may be contacted at P.O. Box 5264, Jamaica Beach, TX 77554, Phone: (409) 737-1142, Fax: (409) 737-5211, Email: cityadmin@ci.jamaicabeach.tx.us.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.12, 15.21 through 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification pursuant to 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules must submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules as provided in 31 TAC §15.3(o)(6).

Jamaica Beach is a coastal community located on Galveston Island, a barrier island accessible from the east via Interstate Highway 45 and FM 3005, and from the west via State Highway 332, Bluewater Highway, and the bridge at San Luis Pass. The Village consists of areas bordering Galveston Bay to the northwest and the Gulf of Mexico to the southeast, and bordered on the northeast and the southwest by the City of Galveston. The Village includes approximately 2/3 miles of beach bordering on the Gulf of Mexico.

The Gulf beaches and adjacent areas governed by the Plan are those areas within the corporate limits of the Village of Jamaica Beach. Galveston County expressly delegated the authority to regulate dune protection and beach access in the Village of Jamaica Beach to the Village in Section II(C)(3) of the Galveston County dune protection and beach access plan certified as consistent with state Law in 31 TAC §15.35.

VARIANCE

On September 17, 2007, the City Council of Jamaica Beach adopted amendments to its Plan and submitted those amendments to the GLO with a request for certification received by the GLO on September 24, 2007. The Village requested that the GLO certify a Plan amendment that includes a variance from the prohibitions and requirements of §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the Beach/Dune Rules. Section 15.4(c)(8) prohibits the construction of concrete slabs or other impervious surfaces within 200 feet landward of the natural line of vegetation. Section 15.5(b)(3) prohibits a local government from issuing a beachfront construction certificate if the construction includes a proposal to build a concrete slab or other impervious surface within 200 feet landward of the line of vegetation or within the eroding area boundary, whichever distance is greater. Section 15.6(f)(3) applies to construction in eroding areas and provides that a local government may allow a permittee to alter or pave only the ground within the footprint of the habitable structure only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet landward from the line of vegetation or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater.

The requested variance establishes special standards for eroding areas providing that: (1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune; (2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the City Building Official, in that area 25 feet from the north toe of the dune to 200 feet landward of the line of vegetation, with driveway width limited to no more width than necessary to service two vehicles; (3) the City shall assess a "Fibercrete Maintenance fee" of $200.00 to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and (4) reinforced concrete may be used under the habitable structure and for a driveway connecting the habitable structure and the street in that area landward of 200 feet from the line of vegetation.

The reasoned justification submitted by the Village in support of its request for the variance authorizing the use of fibercrete in eroding areas within 200 feet seaward of the line of vegetation suggests that it advances the public interest and provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that: (1) the ordinance provides financial assurance for debris removal and beach clean-up through imposition of the $200 fibercrete maintenance fee; (2) debris removal and beach clean-up are facilitated by the use of unreinforced fibercrete in large 4 foot x 4 foot sections rather than small pavers, with less sand removed from the beach during clean-up; and (3) prohibiting the use of fibercrete in the area between the line of vegetation and 25 feet from the north toe of the dune ensures that dune hydrology are not adversely affected. Accordingly, the General Land Office finds that the variance requested by the Village and the Village's reasoned justification for the variance meet the requirements for a variance under §15.3(o)(6) of the Beach/Dune Rules and proposes to certify as consistent with state law the requested variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the Beach/Dune Rules (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards).

FISCAL AND EMPLOYMENT IMPACTS

Ms. Jody Henneke, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amended or new sections. There will be fiscal impact on the local government as a result of enforcing or administering the amended sections. The Plan changes authorizing the Village to assess a $200 Fibercrete Fee will result in an increase in revenue of approximately

$1,000 for each of the first five years the Plan amendment is in effect based on an estimate of five permits issued per year.

Ms. Henneke, has also determined that the proposed rule changes will not have an effect on the costs of compliance for small or large businesses. Individuals who are required to comply with the fibercrete ordinance will experience an increase in cost of $200 per permit application if they seek to use fibercrete in the areas permitted by the ordinance.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

PUBLIC BENEFIT

Ms. Henneke has determined the public will benefit from the proposed amendments for the same reasons cited in the Village's reasoned justification for the variance. Specifically, the justification by the Village supports the finding that the fibercrete ordinance advances the public interest and provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that (1) the ordinance provides financial assurance for debris removal and beach clean-up through imposition of the maintenance fee; (2) debris removal and beach clean-up are facilitated by the use of unreinforced fibercrete in large 4 foot x 4 foot sections rather than small pavers, with less sand removed from the beach during clean-up; and (3) prohibiting the use of fibercrete in the area between the line of vegetation and 25 feet from the north toe of the dune ensures that dune hydrology are not adversely affected. In addition, the fibercrete ordinance is consistent with a similar ordinance adopted by the City of Galveston for similar conditions nearby and its certification promotes uniformity in regulations.

CONSISTENCY WITH CMP

The proposal to amend §15.29 concerning Certification Status of Village of Jamaica Beach Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. The amendment will not allow the material weakening of dunes and does not affect the requirement that unavoidable damage to dunes and dune vegetation be compensated. Additionally, the amendment will preserve public beach access by assisting with debris removal in the event of a storm. The GLO has determined that the proposed actions provide equal or better protection for dunes, dune vegetation, and public access to and use of the beach as the GLO's Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendment will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rule during the comment period.

TAKINGS IMPACT ASSESMENT

The GLO has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and Texas Natural Resources Code §63.121 which provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

PUBLIC COMMENT REQUEST

Written comments on the proposed plan amendment and its consistency with the CMP may be submitted to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX, 78711-2873; facsimile number (512) 463-6311; email address walter.talley@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published.

STATUTORY AUTHORITY.

The amendments are adopted under the Texas Natural Resources Code §§61.011, 61.015(b), 61.022(c) and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code §63.121 provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 61.070, and 63.121 are affected by the proposed amendments.

§15.29. Certification Status of Village of Jamaica Beach Dune Protection and Beach Access Plan.

(a) The Village of Jamaica Beach has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The village's plan was adopted on August 16, 1993 and amended December 6, 1993 and September 17, 2007.

(b) The General Land Office certifies as consistent with state law the following variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title (relating to Dune Protection Standards, Beach-

front Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards) in the Village's plan. The plan establishes special standards for eroding areas providing that:

(1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in maximum of 4 foot x 4 foot sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the City Building Official, in that area 25 feet from the north toe of the dune to 200 feet landward of the line of vegetation, with driveway width limited to no more width than necessary to service two vehicles;

(3) a "Fibercrete Maintenance fee" of $200.00 shall be assessed to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and

(4) reinforced concrete may used under the habitable structure and for a driveway connecting the habitable structure and the street in that area landward of 200 feet from the line of vegetation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706516
Trace L. Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-1859

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PART 5. BOARDS FOR LEASE OF STATE-OWNED LANDS

CHAPTER 201. OPERATIONS OF THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD FOR LEASE

31 TAC §§201.3 - 201.5

The Texas General Land Office (GLO) and the Texas Parks and Wildlife Department and the Texas Department of Criminal Justice Boards for Lease propose amendments to the following sections of Title 31, Part 5, Chapter 201 of the Texas Administrative Code: §201.3 (relating to "Filing in General Land Office"), §201.4 (relating to "Deposits") and §201.5 (relating to "Provisions") of the Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Board For Lease. The first proposed amendment would update the legal reference relating to Filing in the General Land Office. The second proposed amendment would update the title of the Comptroller of Public Accounts. As currently written this rule refers to the state treasurer. The third proposed amendment would update the legal reference relating to Royalty and Reporting Obligation to the State and Discontinuing the Leasehold Relationship.

Larry Laine, Chief Clerk, has determined that during the first five-year period the proposed new rule is in effect there will be no negative fiscal implications for state or local government or small businesses.

Mr. Laine has also determined that, during the first five-year period the rule is in effect, there will be no negative impact on the public as a result of the proposed amendments to the citations and title update.

Comments may be submitted to Walter Talley, Legal Services Division, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin, Texas 78701 or by facsimile (512) 463-6311, by no later than 30 days after publication.

The amendments to these sections are proposed under the Texas Natural Resource Code §34.065 which grants the Texas Department of Criminal Justice and Texas Parks and Wildlife Department boards for lease rulemaking authority. Texas Natural Resources Code §§32.110, 34.002, 34.011, 34.012, 34.013, 34.014, 34.055, 34.057, and 34.064 are affected by this action.

§201.3. Filing in General Land Office.

Records pertaining to leases by a Board for Lease are to be filed in the records of the General Land Office accompanied by any filing fee prescribed by §3.31 [~~§1.3~~] of this title (relating to Fees).

§201.4. Deposits.

Payments received by a Board for Lease are payable to the commissioner of the General Land Office, who will deposit receipts with the Comptroller of Public Accounts [~~state treasurer~~] to the credit of the appropriate special mineral account for the agency involved.

§201.5. Provisions.

The provisions of Texas Natural Resources Code, Chapters 32 and 52, and §9.51 [~~§9.7~~] of this title (relating to Royalty and Reporting Obligation to the State), and Subchapter F, §§9.91 - 9.95 [~~§9.8~~] of this title (relating to General Provisions, Release, Assignments, Termination and Forfeiture [~~Discontinuing the Leasehold Relationship~~]) shall apply to leases issued by a Board for Lease.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706517
Trace L. Finley
Deputy Commissioner, Policy and Governmental Affairs, General Land Office
Boards for Lease of State-Owned Lands
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER CC. SEXUALLY ORIENTED BUSINESS FEE

34 TAC §3.722

The Comptroller of Public Accounts proposes a new §3.722, concerning sexually oriented business fee. The new rule incorporates legislative changes in House Bill 1751, 80th Legislature, 2007, that amended Business and Commerce Code, Chapter 47. House Bill 1751 amended the Business and Commerce Code to impose on a sexually oriented business a fee for each entry by each customer admitted to the business. This new rule provides definitions, registration requirements, fee calculation, due date and reporting requirements and record requirements.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the obligations of businesses subject to this fee. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The new section implements Business and Commerce Code, §§47.051, 47.052, 47.053, 47.054, and 47.056.

§3.722. Sexually Oriented Business Fee.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Customer--Any person on the premises of a sexually oriented business except:

(A) an owner, operator, independent contractor of the business or an employee of that sexually oriented business; or

(B) a person who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises.

(2) Nude--To be entirely unclothed, or clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.

(3) Sexually oriented business--A nightclub, bar, restaurant, or similar commercial enterprise that:

(A) provides for an audience of two or more individuals live nude entertainment or live nude performances; and

(B) authorizes on-premises consumption of alcoholic beverages, regardless of whether the consumption of alcoholic beverages is under a license or permit issued under the Alcoholic Beverage Code.

(b) Questionnaire. A sexually oriented business, as defined in this section, is required to complete and submit a Texas sexually oriented business fee questionnaire on a form prescribed by the comptroller to file the report and remit the fee imposed under Business and Commerce Code, Chapter 47.

(c) Imposition and Calculation of Fee.

(1) A $5.00 fee is imposed on a sexually oriented business for each entry by each customer admitted to the business.

(2) A sexually oriented business has the discretion to determine how it will derive the money to pay the fee. All door and cover charges, including reimbursement of the sexually oriented business fee from its customers, are subject to sales tax as provided by Tax Code, Chapter 151.

(3) A business that holds occasional events described in subsection (a)(3) of this section, but does not habitually engage in the activity described in subsection (a)(3) of this section is liable for the sexually oriented business fee for those occasional events. For example, a nightclub that hosts a wet t-shirt contest is liable for the fee based upon attendance during the event.

(d) Report forms. The sexually oriented business fee must be reported on a form as prescribed by the comptroller. The fact that the sexually oriented business does not receive the form or does not receive the correct form from the comptroller for the filing of the return does not relieve the business of the responsibility of filing a return and remitting the fee.

(e) Due date of report and payment.

(1) The sexually oriented business fee report and payment are due no later than the 20th day of the month following the calendar quarter month in which the liability for the fee is incurred.

(2) A sexually oriented business must file a quarterly report even if there is no fee to report.

(f) Penalty. Penalties due on delinquent fees and reports shall be imposed as provided by Tax Code, §111.061.

(g) Interest. Interest due on delinquent fees shall be imposed as provided by Tax Code, §111.060.

(h) Records required.

(1) A sexually oriented business is required to maintain records, statements, books, or accounts necessary to determine the amount of fee for which the business is liable to pay.

(2) A sexually oriented business shall record daily the number of customers admitted to the business. The manner in which a sexually oriented business maintains records of the number of customers admitted to the business may be written, stored on data processing equipment, or may be in any form that the comptroller may readily examine.

(3) The comptroller or an authorized representative has the right to examine any records or equipment of any person liable for the fee in order to verify the accuracy of any report made or to determine the fee liability in the event no return is filed.

(4) Records required by the comptroller must be kept for at least four years after the date on which the records are prepared. A business must make records available for inspection and audit on request by the comptroller.

(i) Failure to keep accurate records. If a sexually oriented business fails to keep accurate records of the number of customers admitted to the business the comptroller may estimate the amount of fee liability based on any available information that includes, but is not limited to,

any reports required to be filed per Tax Code, Chapter 151 or Chapter 183.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706491
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.402

The Comptroller of Public Accounts proposes an amendment to §9.402, concerning special use application forms. Tax Code, §23.54 requires the comptroller to prescribe exemption application forms.

The rule is being amended to adopt by reference amended application forms for 1-d-1 Appraisal Application (1-d-1 Agricultural Land) and the 1-d Appraisal Application (1-d Agricultural Land).). An amendment to the 1-d-1 appraisal application is proposed to implement a provision of House Bill 604, 80th Legislature, 2007, effective January 1, 2008, which allows land used for wildlife management and under a federal permit to protect endangered species to qualify for 1-d-1 appraisal without a five-year agricultural appraisal history. An amendment to the 1-d appraisal application form is proposed to implement House Bill 3630, 80th Legislature, 2007, effective January 1, 2008, which provides that land subject to an equity loan may not qualify for 1-d agricultural appraisal. Subsection (b) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by updating the agricultural appraisal forms to better reflect current legal requirements for taxpayers. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §23.54, which requires that the comptroller prescribe application forms for 1-d-1 agricultural appraisal, and Tax Code, §23.43, which requires the comptroller to prescribe the application form for 1-d agricultural appraisal.

The amendment implements Tax Code, §23.54, House Bill 604 and House Bill 3630, adopted in 2007 by the 80th Legislature.

§9.402. Special Use Application Forms.

(a) In applying for special use valuation under [~~the~~] Tax Code, Chapter 23, the applicant shall use a form provided by the appraisal office. The appraisal office shall use the model form adopted by the Comptroller of Public Accounts which is appropriate to the special use type, or use a form containing information which is in substantial compliance with the model form adopted by the comptroller.

(b) The model application forms listed in paragraphs (1) - (7) of this subsection are adopted by the Comptroller of Public Accounts by reference. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~]

(1) 1-d Appraisal Application (1-d Agricultural Land), (Form 50-165);

(2) 1-d-1 Appraisal Application (1-d-1 Agricultural Land), (Form 50-129);

(3) open-space land application (1-d-1 timberland), (Form 50-167);

(4) 1-d-1 Ecological Laboratory Appraisal Application, (Form 50-166);

(5) application for recreational, park, and scenic land, (Form 50-168);

(6) application for public access airport property, (Form 50-169); and

(7) application for restricted-use timberland appraisal (Form 50-281).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706533
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-0387

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34 TAC §9.419

The Comptroller of Public Accounts proposes an amendment to §9.419, concerning procedures for determining property tax exemption for motor vehicles leased for personal use. This rule adopts by reference three forms, including a form for the rendition of leased motor vehicles. Tax Code, §22.24, requires taxpayers to render on a form prescribed or approved by the comptroller. Subsection (c) is amended to delete reference to the

telephone numbers for Telecommunication Device for the Deaf (TDD).

Effective September 1, 2007, House Bill 264, adopted by the 80th Legislature, 2007, permits property owners to affirm if the information in the property owner's most recently filed rendition continues to be accurate. The bill requires each rendition form prescribed by the comptroller to provide a box that the property owner may check to affirm that the information in the most recently filed rendition continues to be accurate.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by streamlining the rendition process. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §22.24, which requires the comptroller to prescribe rendition forms. The amendment is also proposed under Tax Code, §11.43, which requires the comptroller to prescribe the contents of the application form for each kind of exemption.

The amendment implements Tax Code, §22.24.

§9.419. Procedures for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use.

(a) Effective Date. This section is effective for motor vehicles that are leased on or after January 2, 2001.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Lease--An agreement whereby an owner of a motor vehicle for consideration gives exclusive use of a motor vehicle to another for a period that is longer than 180 days.

(2) Lessee--A person who enters into a lease for a specific motor vehicle primarily for the personal use of the lessee or the lessee's family.

(3) Lessor--A person who owns a motor vehicle that is leased to another person.

(4) Lessee's Affidavit--A sworn statement that a lessee executes to attest that the lessee does not hold the leased motor vehicle for the production of income and does not primarily use the leased motor vehicle for the production of income.

(5) Motor vehicle--A passenger car or truck with a shipping weight of 9,000 pounds or less.

(6) Reasonable date and/or time--A work weekday, Monday through Friday, and a time that is after 8:00 a.m. and before 5:00 p.m., unless the appraisal district and the lessor agree otherwise.

(c) The comptroller will make available model forms that are adopted by reference in paragraph (1) of this subsection. Copies of the form are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~]

(1) The comptroller adopts by reference the following model forms:

(A) Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285);

(B) Lessor's Application for Personal Use Lease Automobile Exemptions (Form 50-286); and

(C) Lessor's Rendition or Property Report for Leased Automobiles (Form 50-288).

(2) A chief appraiser or lessor must use the comptroller model forms that are adopted by reference in paragraph (1) of this subsection, unless the non-model form:

(A) for Lessee's Affidavit of Primarily Non Income Producing Vehicle Use, for Lessor's Application for Personal Use Lease Automobile Exemptions, and Lessor's Rendition or Property Report for Leased Automobiles substantially complies with Form 50-285, Form 50-286, and Form 50-288 by using the same language in the same sequence as the model form;

(B) is an electronic version of a comptroller model form and preserves the same language in the same sequence as the comptroller model form; or

(C) has been approved by the comptroller in writing before the form is used.

(3) After a lessee's affidavit is signed by a lessee and properly notarized, a lessor may make an electronic image of the lessee's affidavit and may produce the electronic image of the affidavit to the chief appraiser when an inspection is requested, subject to the condition of subsection (e)(1)(D) [~~(e) (1) (D)~~] of this section.

(4) Subject to the limitations that are provided in paragraph (2) of this subsection, if a chief appraiser uses a form other than the one that the comptroller has adopted, then the chief appraiser must make the form available to the lessor. A chief appraiser may not mandate the use of his form in lieu of the comptroller model form and may not deny a lessor's claim for exemption based solely on the lessor's failure to use the chief appraiser's form.

(5) No provision in this section should be construed as limiting the chief appraiser's authority to enter into an agreement for electronic exchange of information covered by this section in a format agreed to by the chief appraiser and the lessor.

(d) A lessor satisfies the requirements of Tax Code, §11.252, for exemption of leased motor vehicles if the lessor:

(1) properly completes and timely files with the chief appraiser the Lessor's Rendition or Property Report for Leased Automobiles (Form 50-288);

(2) properly completes and timely files with the chief appraiser the Lessor's Application for Personal Use Lease Automobile Exemptions (Form 50-286);

(3) receives Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that the lessee executed on or before the date on which the required forms that are enumerated in paragraphs (1) and (2) of this subsection have been filed; and

(4) maintains each Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that pertains to each leased motor vehicle for which the lessor seeks an exemption;

(e) A chief appraiser may inspect and/or obtain copies of lessees' affidavits that the lessor maintains.

(1) Unless agreed to otherwise, a lessor and a chief appraiser shall use the following procedures when the chief appraiser proposes to inspect lessees' affidavits on leased motor vehicles for which the lessor seeks an exemption.

(A) No less than 10 days prior to the inspection, the chief appraiser shall provide the lessor with notice of the chief appraiser's intention to inspect the lessees' affidavits in the lessor's possession or control. The notice must state a reasonable date and time when the chief appraiser proposes to inspect the lessees' affidavits and shall identify the affidavits that will be subject to inspection.

(B) If the proposed date or time is not convenient, then the lessor may propose an alternate reasonable date or time by notifying the chief appraiser in writing.

(C) The lessor shall provide the chief appraiser with reasonable accommodations to inspect and copy any of the lessees' affidavits, or shall permit the chief appraiser to take the affidavits off premises for a period of no less than 48 hours to inspect and copy.

(D) The lessor may provide electronic images of the lessees' affidavits, unless the chief appraiser does not have equipment to receive or read electronic images. If the image is not sufficiently clear to distinguish the characteristics of a lessee's handwriting and to see the notarized signature and any other relevant details, the chief appraiser may request to inspect an original lessee's affidavit.

(E) If the lessor is located more than 150 miles from the appraisal district's office, then the chief appraiser may submit a written request that the lessor either copy and mail the identified lessees' affidavits or send the original affidavits to the chief appraiser for at least 14 days for inspection and copying. The chief appraiser and the lessor may determine who should bear the costs of copying and mailing.

(2) A chief appraiser should first attempt to obtain information from the lessor. If the lessor does not provide the requested information within the specified time period, then the chief appraiser may contact the lessee directly.

(f) A properly executed Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) is prima facie evidence that the motor vehicle is not held for the production of income and is used primarily for non-income producing activities.

(1) A chief appraiser shall also consider the following evidence of primarily non-income producing use:

(A) an affidavit by the lessee's spouse or other credible person who has information about the use of the leased motor vehicle and mileage records; and

(B) a statement by the lessee's employer that the motor vehicle was not used or required to be used in the lessee's employment.

(2) Since the rulemaking authority that is given the comptroller does not extend to the Appraisal Review Board, this subsection does not apply to proceedings or decisions of the Appraisal Review Board.

(g) If a chief appraiser has reason to question, in whole or in part, the validity of the lessor's application for exemption, then the chief appraiser may investigate and shall notify the lessor of the chief appraiser's intent to investigate. The notice that is required by this rule shall:

(1) identify the motor vehicle that the chief appraiser questions as qualifying for the exemption;

(2) state separately the reason for questioning the claimed exemption or lessee's affidavit;

(3) specify the additional information that the chief appraiser seeks; and

(4) state the due date upon which the requested information must be delivered.

(h) If a chief appraiser determines that some of the motor vehicles that the lessor claims in the application for exemption do not qualify for exemption, then the chief appraiser may modify the exemption by disallowing the amount of value that the non-exempt leased motor vehicles represent, but shall grant the exemption on the remaining value of the leased motor vehicles. Any notice of modification or denial of the claimed exemption shall be made in accordance with the notice requirements of Tax Code, §11.43 and §11.45.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706512
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-0387

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.801

The Comptroller of Public Accounts (Comptroller) proposes amendments to §9.801, concerning notice of protest. The proposed amendments updates the model notice of protest, which is adopted by reference. House Bill 538, 80th Legislature, 2007, effective January 1, 2008, provided property owners with a right to postponement of a protest hearing under certain circumstances. The proposed amendment to the form will add the new right to the form for the notice of protest.

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing property owners correct information concerning notices of protest. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §41.44, which requires the Comptroller to adopt a notice of protest.

The proposed amendment implements §41.44, which sets forth the contents of the notice of protest and House Bill 538, 80th Legislature, 2007.

§9.801. Notice of Protest.

(a) To be entitled to a hearing and determination of a protest by an appraisal review board, a protesting property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested.

(b) "Protesting property owner" is defined as follows:

(1) the actual title owner of the property; or

(2) a person leasing the title owner's property and who is contractually obligated to reimburse the title owner for taxes imposed against the property.

(c) If the title owner of the property does not protest the tax assessment, then the person leasing the property who is contractually obligated to reimburse the title owner for taxes imposed against the property may file a notice of protest.

(d) A notice of protest is sufficient if it:

(1) identifies the protesting property owner, including a person claiming an ownership interest in the property;

(2) identifies the property that is the subject of the protest; and

(3) indicates apparent dissatisfaction with some determination of the appraisal office.

(e) The notice of protest need not be on an official form. The protesting property owner may use the model form adopted by[,] and available from the Comptroller of Public Accounts or any other form or notice which contains the information set forth in subsection (d) of this section.

(f) [~~The Model~~] Notice of Protest Form 50-132[~~41.44~~] is adopted by the Comptroller of Public Accounts by reference. Copies of this form are available from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706463
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 463-4601

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SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3031

The Comptroller of Public Accounts proposes an amendment to §9.3031, concerning rendition forms. Tax Code, §22.24 requires taxpayers to render on a form prescribed or approved by the comptroller.

Effective September 1, 2007, House Bill 264, adopted in 2007 by the 80th Legislature, permits property owners to affirm if the information in the property owner's most recently filed rendition continues to be accurate. The bill requires that each rendition form prescribed by the comptroller to provide a box that the property owner may check to affirm that the information in the most recently filed rendition continues to be accurate. Subsection (d) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by streamlining the rendition process. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §22.24 which requires that the comptroller to prescribe rendition forms, and House Bill 264.

The amendment implements Tax Code, §22.24 and House Bill 264.

§9.3031. Rendition Forms.

(a) All appraisal offices and all tax offices appraising property for purposes of ad valorem taxation shall prepare and make available at no charge, printed or electronic forms for the rendering of property.

(b) A person rendering property shall use the model form adopted by the Comptroller of Public Accounts or a form containing information which is in substantial compliance with the model form if approved by the comptroller.

(c) Nothing in this section shall be construed to prohibit the combination of the information contained on two or more model forms into a single form in order to use a single form to achieve substantial compliance with two or more model forms.

(d) The model rendition forms for various categories of property in paragraphs (1)-(17) are adopted, as amended, by the comptroller by reference. Copies of these forms are available for inspection at the offices of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling toll-free 1-800-252-9121. In Austin, call (512) 305-9999. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~] The model rendition forms are:

(1) General Real Estate Rendition of Taxable Property, (Form 50-141);

(2) General Personal Property Rendition of Taxable Property-Non Incoming Producing, (Form 50-142);

(3) Report of Leased Space for Storage of Personal Property, (Form 50-148);

(4) Industrial Real Property Rendition of Taxable Property, (Form 50-149);

(5) Oil and Gas Lease Rendition of Taxable Property, (Form 50-150);

(6) Mine and Quarry Real Property Rendition of Taxable Property, (Form 50-151);

(7) Telephone Company Rendition of Taxable Property, (Form 50-152);

(8) REA-Financed Telephone Company Rendition of Taxable Property, (Form 50-153);

(9) Electric Company and Electric Cooperative Rendition of Taxable Property, (Form 50-154);

(10) Gas Distribution Utility Rendition of Taxable Property, (Form 50-155);

(11) Railroad Rendition of Taxable Property, (Form 50-156);

(12) Pipeline and Right-of-Way Rendition of Taxable Property, (Form 50-157);

(13) Business Personal Property Rendition of Taxable Property, (Form 50-144);

(14) Watercraft Rendition of Taxable Property, (Form 50-158);

(15) Aircraft Rendition of Taxable Property, (Form 50-159);

(16) Mobile Homes Rendition of Taxable Property, (Form 50-160); and

(17) Residential Real Property Inventory, (Form 50-143).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706511
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 3, 2008
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 877. GRANT AWARDS

40 TAC §§877.1, 877.3, 877.4

The Texas Council for Developmental Disabilities proposes amendments to 40 TAC §877.1, §877.3, and §877.4 concerning grants awarded to public or private organizations. The proposed amendments clarify that project specific independent reviews and other procedures may be required of grant recipients who are not otherwise required to have an annual independent audit by federal or state requirements. The proposed amendments also clarify procedures for grantees to request reconsideration of a suspension or termination of funding.

Roger Webb, Executive Director, has determined that for each year of the first five years the amended sections are in effect there will be no fiscal implications for state or local government.

Mr. Webb has also determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of the amended sections is the efficient accountability of grants awarded by the agency, and a clear understanding of the process for grantees to request reconsideration of certain funding decisions.

Mr. Webb has determined that for the first five years the amended sections as proposed are in effect, there will be no effect on small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments may be submitted to Carl Risinger, Operations Director, Texas Council for Developmental Disabilities, by mail at: 6201 E. Oltorf, Suite 600, Austin, Texas; by facsimile at (512) 437-5434; or be e-mail at tcdd@tcdd.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The proposed amendments are authorized under Texas Human Resources Code §112.020 which provides the Council with authority to adopt rules as necessary to implement the Council's duties and responsibilities.

The amendments will effect Texas Human Resources Code, Title 7, Chapter 112, Developmental Disabilities.

§877.1. General.

(a) - (e) (No change.)

(f) Independent audits of grantees are required for each year of funding in accordance with the requirements of OMB Circulars and Texas Uniform Grant Management Standards. Project specific independent reviews and other procedures may be required of grantees not subject to annual independent audit requirements of OMB or UGMS consistent with Council policies. The Council shall reimburse the grantees for the reasonable cost of the required audit activities. [~~The Council may require project specific independent audits of grantees receiving less than $300,000 annually of council funds.~~]

(g) - (j) (No change.)

§877.3. Suspension or Termination of Funding.

(a) - (c) (No change.)

(d) The procedure to request reconsideration of a suspension or termination of funding shall be included in grant award materials.

§877.4. Appeal of Funding Decisions.

Appeals may be submitted from applicants for grants who did not receive funding, or from grantees whose grants have not been awarded continuation funding [~~, or from grantees whose grants have been suspended or terminated prior to the end of a funding period~~]. The appeals process adopted by the Council shall be included in grant application [~~and grant award~~] materials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706525
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Proposed date of adoption: February 22, 2008
For further information, please call: (512) 437-5442

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

The Texas Residential Construction Commission withdraws the proposed repeal of §301.1 which appeared in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3947).

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706480
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: December 19, 2007
For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

The Railroad Commission of Texas withdraws the proposed amendments to §8.1 and §8.5 which appeared in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7575).

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706432
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 18, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.115, 8.135

The Railroad Commission of Texas withdraws the proposed amendments to §8.101 and §8.115 and new §8.135 which appeared in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7576).

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706433
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 18, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.203, 8.205, 8.210, 8.215, 8.230, 8.235

The Railroad Commission of Texas withdraws the proposed amendments to §§8.203, 8.205, 8.210, 8.215, 8.230, and 8.235 which appeared in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7577).

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706434
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 18, 2007
For further information, please call: (512) 475-1295

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16 TAC §8.245

The Railroad Commission of Texas withdraws the proposed repeal of §8.245 which appeared in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7582).

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706436

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 18, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §§8.301, 8.305, 8.310, 8.315

The Railroad Commission of Texas withdraws the proposed amendments to §§8.301, 8.305, 8.310, and 8.315 which appeared in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7580).

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706435
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 18, 2007
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §100.1041

Proposed amended §100.1041, published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3453), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706443

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendments to §217.1 which appeared in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7017).

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706620
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: December 21, 2007
For further information, please call: (512) 936-7722

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.62

The Office of the Secretary of State, Elections Division, adopts amendments to §81.62, concerning the requirement of having a continuous feed printer dedicated to a real-time audit log on automatic tabulation equipment. The rule is adopted without change to the text as proposed in the July 20, 2007, *Texas Register* (32 TexReg 4517).

The rule is amended to reflect federal voluntary voting system guidelines.

No comments were received concerning the rule.

The amendment is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Texas Election Code, Chapter 31, Subchapter A, §31.003.

Texas Election Code §122.001 is affected by this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706563
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: January 9, 2008
Proposal publication date: July 20, 2007
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of §351.3, Purpose, Task, and Duration of Advisory Committees without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6921) and will not be republished.

The repeal of §351.3 is adopted as the rule contained outdated information about HHSC advisory committees.

New §351.3 lists the advisory committees and complies with the requirements set out in the Government Code, §2110.005, Agency-Developed Statement of Purpose and Tasks; Reporting Requirements and §2110.008, Duration of Advisory Committees. The active advisory committees referenced in the rule are approved by the HHSC Executive Commissioner. The Government Code §2110.005 and §2110.008 require the following information regarding advisory committees to be included in rule:

the purpose and task of the committee;

the manner in which the committee will report to the agency; and

a date on which the committee will be abolished.

Comment

The 30-day comment period ended on November 4, 2007, during which staff did not receive any comments regarding the proposed repeal and or the proposed adoption of the new rule. Additionally, a public hearing was held on October 17, 2007 and staff did not receive any comments regarding the proposals.

1 TAC §351.3

The repeal is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706556

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 9, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 424-6900

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1 TAC §351.3

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706557
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 9, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN AND DESIGN MARK

4 TAC §§17.51 - 17.58, 17.60

The Texas Department of Agriculture (the department) adopts amendments to Chapter 17, Subchapter C, §§17.51 - 17.58, concerning the department's GO TEXAN promotional marketing program, and new §17.60, concerning the addition of the GO TEXAN Restaurant Program. The amendments to §17.58 and new §17.60 is adopted with changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8235). The amendments to §§17.51 - 17.57 are adopted without changes to the proposed text and will not be republished.

The amendments to §§17.51 - 17.58 are adopted to delete all references to programs that no longer exist as part of the GO TEXAN program, such as TAP, Taste of Texas, Vintage Texas, Texas Grown and Naturally Texas, and to insert references to the GO TEXAN Restaurant Program into §17.51, Definitions, §17.52, Application for Registration to Use the GO TEXAN and Design Mark, §17.55, Registration of Those Entitled to Use the GO TEXAN and Design Mark, and §17.56, Termination of Registration to Use the GO TEXAN and Design Mark. Further, new §17.60 establishes a GO TEXAN Restaurant Program, which will allow restaurants in Texas to become GO TEXAN members and provide consumers a way to identify restaurants in Texas that are using Texas agricultural products as part of their menus.

The department has determined that one minor change to the proposed new §17.60(e) is necessary to clarify that restaurants may obtain a health permit from a licensing entity other than the Texas Department of State Health Services. Depending on the jurisdiction in which the restaurant is located, a restaurant is required to obtain a health permit from either the state, county or city licensing authority.

No written public comments were received on the proposal.

The amendments to Chapter 17, Subchapter C and new §17.60 are adopted under Texas Agriculture Code, §12.0175 which provides that the department by rule may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state and may adopt rules necessary to administer such a program and that the department may charge a membership fee, as provided by department rule, for each participant in a program established under §12.075.

§17.58. GO TEXAN Beef Program.

(a) Statement of Purpose; Applicability. The GO TEXAN Beef Program is established to provide a marketing program that adds value to raw Texas beef by allowing use of the Texas Department of Agriculture's GO TEXAN and Design mark only on raw beef products that meet important quality and palatability characteristics. This section provides that feedlot operations, harvest operations, fabricators and private label marketers may be certified as GO TEXAN Beef Program members if they meet the requirements of this section. This section shall apply only to 100% raw beef products, as defined in this section. Though processed beef products (products that have been altered from a raw state by the addition of seasonings or marinades or by being cooked using techniques indigenous to Texas' cooking cultures such as by BBQ, Tex-Mex, Southwestern cuisine, etc.) are not eligible for membership in the GO TEXAN Beef Program, they are eligible for membership in the general "GO TEXAN" Program, as set forth in this subchapter. Beef cattle producers may also qualify for membership in the general "GO TEXAN" Program as livestock producers.

(b) Product Requirements. Raw and non-processed beef products meeting the requirements outlined in this section will be eligible for certification as "GO TEXAN" 100% beef products as part of the GO TEXAN Beef Program. For purposes of this section, the word "non-processed" means a 100% beef product that has not been altered from its raw state by the addition of seasonings or marinades or by being cooked.

(c) Membership Categories, to include Feedlot Operators, Harvest Operations, Fabricators and Private Label Marketers.

(1) Feedlot operations. In order to be certified as a "GO TEXAN" feedlot, a feedlot must meet the following requirements:

(A) The feedlot must be located in Texas.

(B) The feedlot must participate in a beef safety and quality assurance program and may feed Vitamin E to the cattle certified for slaughter as a "GO TEXAN" 100% beef product.

(C) The feedlot must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(2) Harvest operations. In order to be certified as a "GO TEXAN" harvest operation, a facility including a beef packer or boxed beef supplier, must meet the following requirements:

(A) The facility must be located in Texas and must be inspected by the Texas Department of State Health Services (DSHS) or the United States Department of Agriculture (USDA).

(B) All cattle harvested by the facility for certification as a "GO TEXAN" 100% beef product must have resided in Texas a minimum of 100 days immediately prior to harvesting.

(C) The facility must employ practices to optimize palatability of beef cuts. All operations shall utilize the following practices:

(i) High voltage electrical stimulation of 300 volts or more along with a postmortem aging plan of 14 days or more, as approved by the commissioner and the scientific panel appointed by the commissioner; or

(ii) Another palatability-enhancing program that is validated with scientific data through the Option 2 Sampling Plan approved by the commissioner and the scientific panel appointed by the commissioner. Operations who do not utilize USDA's grading service may be exempt from grading requirements specified in subparagraph (D)(i) - (iii) of this paragraph and still admitted to the program if their Option 2 plan is approved by the Commissioner and panel. Copies of the plan are available through the Texas Department of Agriculture.

(D) Raw beef eligible for certification as a "GO TEXAN" 100% beef product must be of the following quality:

(i) Products of Prime, Choice or Select quality as defined by the USDA;

(ii) Products of Yield Grades 1, 2 or 3, as defined by the USDA;

(iii) Products coming from carcasses with a maturity score in the "A" maturity range, as defined by USDA;

(iv) Products coming from carcasses weighing less than 899 pounds; and

(v) Products not coming from carcasses with dark-cutting characteristics.

(E) The harvest facility must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(3) Fabricators. For the purposes of this section, a fabricator is defined as a meat processing establishment that purchases wholesale cuts of meat and converts them into ready-to-cook cuts for the retail or foodservice market by such steps as portioning, grinding, cubing and other such practices. In order to be certified as a "GO TEXAN" fabricator, a fabricator must meet the following requirements:

(A) The fabrication facility must be located in Texas.

(B) The owner or operator must confirm that raw materials used will be 100% raw beef sourced back to a DSHS or USDA inspected harvest facility, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) of this subsection, or the Option 2 Sampling Plan.

(C) The fabricator must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(4) Private label marketers. In order to be certified as a "GO TEXAN" private label marketer of 100% beef products, private label marketers must meet the following requirements:

(A) Marketers who have a raw beef product boxed for their own label by another harvest facility or fabricator must confirm that the raw materials used will be 100% raw beef sourced back to a harvest facility or fabricator located in Texas, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) or paragraph (3)(A) - (C) of this subsection, or the Option 2 Sampling Plan.

(B) The private label marketer must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(d) Application Process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the GO TEXAN and Design Mark).

(2) Applicants must certify on the application that all applicable GO TEXAN Beef Program requirements are met.

(3) The department may contact applicants to verify that all GO TEXAN Beef Program requirements are met.

(4) Except as otherwise provided in this section, all requirements for membership in the general "GO TEXAN" program shall apply to entities certified under this section.

(e) Fees. Applicants shall submit an annual fee in the amount of $25 at the time of application to enroll in the GO TEXAN Beef Program. The annual fee is prorated monthly for membership of less than one year. Companies will be billed the annual registration fee of $25 each membership year thereafter.

(f) Review Panels. Review panels provided for as part of the application review process under this section shall be appointed by the commissioner and shall be composed of three meat scientists with doctorate degrees in meat science and a background in research.

§17.60. GO TEXAN Restaurant Program.

(a) Statement of Purpose: The GO TEXAN Restaurant Program is established to provide a marketing program that adds value to Texas restaurants and encourages these establishments to purchase products produced or processed in Texas.

(b) Restaurant Requirements: To be eligible for the GO TEXAN Restaurant Program, members shall meet and agree to the following requirements:

(1) Restaurant members shall purchase and use product(s) made, grown, processed or value added in Texas, as well as products produced by GO TEXAN members.

(2) Restaurant members must complete and submit the annual GO TEXAN survey.

(3) Restaurant must be a permitted food establishment providing restaurant service located in Texas that is permitted in accordance with all state and local laws and restaurant regulations.

(c) Restaurants headquartered out of state must have a place of business with a Texas address to be considered eligible for GO TEXAN Restaurant Program membership.

(d) Display of GO TEXAN Restaurant Program Items:

(1) Restaurant members may post their membership certificate to give notice that their establishment is an official GO TEXAN Restaurant member.

(2) Restaurant members shall, whenever possible, display, advertise and promote product(s) made, grown, processed or value added in Texas to consumers within the restaurant. Texas Department of Agriculture will provide a copy of the GO TEXAN logo for use in promotion of the Texas restaurant establishment.

(e) Application Process:

(1) Application to use the GO TEXAN and Design mark in accordance with this section shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the GO TEXAN and Design Mark).

(2) Applicants must certify on the application that all applicable GO TEXAN Restaurant Program requirements are met.

(3) Except as otherwise provided in this section, all requirements for membership in the general GO TEXAN program shall apply to restaurants certified under this section.

(4) Restaurants must submit the GO TEXAN Restaurant Program Member application in addition to the $25 annual GO TEXAN membership fee. Restaurants will be billed the annual registration fee of $25 each membership year thereafter.

(5) Restaurants must submit a copy of the establishment's food permit that has been issued by the restaurant's applicable licensing agency with the membership application. If a restaurant establishment loses its permit or if the permit is revoked by its applicable licensing agency, the establishment's GO TEXAN membership is void.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706555
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: January 9, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §§53.50 - 53.63

The Texas Department of Housing and Community Affairs (Department) adopts the repeal of Chapter 53, §§53.50 - 53.63, concerning the HOME Investment Partnership Program, without changes to the proposal as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6932) and will not be republished.

The sections are adopted for repeal in order to promulgate new sections addressing the adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Public hearings on the repeal were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the repeal of the rule were accepted by mail, e-mail, and facsimile through October 10, 2007.

No comments were received regarding adoption of this repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706625
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 10, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 475-3916

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CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER A. GENERAL

10 TAC §§53.1 - 53.9

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter A, §§53.1 - 53.9, concerning HOME Rules. Section 53.2 is adopted with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6932). Sections 53.1 and 53.3 - 53.9 are adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Public comments on the proposed rule were received by (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; and, (69) HOME Task Force.

GENERAL COMMENT (64): Commenter expresses disappointment that the recommendations offered by the HOME Task Force were largely ignored by staff in drafting the proposed rule. Concern was also stated that if the board adopts these rules, there will be a decline in applications across OCC, HBA and TBRA programs.

STAFF RESPONSE: Comment is not specific to proposed rule, however it should be noted that some of the Task Force recommendations have indeed been addressed as will be mentioned throughout this document. There were seventy-six (76) specific Task Force recommendations. Of those some conflicted with Federal or Legislative requirements or often each other; therefore not all of the proposed changes could be implemented or incorporated into the proposed rule. As an additional consideration, some of the recommendations have already been were indirectly incorporated as policy. As an example, the reorganization of the HOME Division to create "one group" responsible for the administration of the HOME Program has effectively addressed several Task Force concerns: increased technical assistance and contract oversight for contract performance; streamlining application requirements by revisiting processes (such as open application cycles) to help distribute funds as they are needed; and identifying internal expertise to work on creating a Community Housing Development Organization (CHDO) training process. Finally, some of the recommendations by the HOME Task Force that were incorporated into the proposed rule include increasing the contract term for both OCC and TBRA and changing the contract start date to be effective when the Department's Executive Director executes the contract. Staff has also included recommended changes to the proposed rule to address Rider 5 eligible households and increased soft costs to provide funding for expenses related to the loan closing requirements.

GENERAL COMMENT (66): Commenter states the HOME Task Force recommendations regarding the timelines for TBRA assistance for those organizations assisting people with disabilities transitioning from an institution should be adopted.

STAFF RESPONSE: Comment is not specific to what timelines should be adopted, however staff feels that current timelines balance sufficient time for contract fulfillment with the need to assist Texans promptly.

GENERAL COMMENT (69): One document containing comment and signatures for some of the HOME Task Force members and additional community members was received. This comment will be summarized in this section as it does not directly address specific changes to the proposed rule, but rather addresses HOME Task Force recommendations. The comment stated the group's disappointment in incorporating fifteen recommendations subcommittee members presented in the four issue areas of:

1) Form of assistance for Owner Occupied Housing Program (loan versus grant),

2) Determination of appropriate contract terms,

3) Interim contract performance benchmarks, and

4) Match requirements.

Major recommendations made by these subcommittees that the commenters felt had not been included in the proposed rule include: grants for Rider 5 eligible households, an increase in soft costs percentage to cover unfunded costs resulting from 2006 program changes, a 24-month contract term for the Owner-Occupied Housing Assistance Program (OCC), a contract start date tied to TDHCA execution date, technical assistance for missed benchmarks, and a reduction in match percentages based on population.

Regarding the first issue of form of assistance for OCC, the commenters identified several specific recommendations that were not included in the proposed rule including the incorporation of a Demonstration Loan Program, providing for unfunded additional soft costs, and not requiring an additional four years of homeowners insurance.

In the second issue area, the determination of contract terms, the commenters stated a desire to return the OCC contracts to a 24-month term with recommended contract benchmarks, adopt new benchmarks for Tenant-Based Rental Assistance (TBRA) for Persons with Disabilities (Olmstead) contracts, adopt new benchmarks for the OCC contracts, and adopt new benchmarks for Homebuyer Assistance Program (HBA) contracts.

The third issue area of interim contract performance measures recommendations include: allowing the procurement of professional services prior to contract award, incorporating new standards if benchmarks are missed including a mandatory technical assistance visit from the Department on missing the first benchmark by more than 30 days and requiring a workout plan if a subsequent benchmark is missed with option to deobligate if no resolution.

Additionally changes to the proposed rule that were never presented to the Task Force for discussion include a reduction in soft cost percentage, limiting the number of progress inspections, listing a minimal number of "eligible" line item soft costs, and requiring contract amendments for each benchmark missed.

With regards to the recommendation of grants for Rider 5 eligible households, there are two stated points. First, the loans for this targeted group creates a burden on the Contract Administrators creating the loan packages. Second, by requesting loan repayment, there is an undue burden on elderly, who even at $100 a month, may need to make choices between safe housing, food, utilities, and medicine. An alternative suggestion is utilizing a five-year deferred forgivable loan that is secured by a promissory note (not requiring a closing, appraisal, or title commitment).

Finally, regarding match, commenters identified three issues that were not addressed in the proposed Rule including the elimination of match for TBRA Contract Administrators, the reduction of the match scoring requirement for applicants other than TBRA, and the reduction of the match percentage for smaller cities and counties as a threshold requirement upon application.

STAFF RESPONSE: Please note that since this general public comment merely references that the Department did not adopt the HOME Task Force language and recommendations and does not specifically provide comments citing sections of the proposed rule, staff has not revisited the HOME Task Force language and recommendations with a reasoned response. At the time the Task Force met, staff informed all members that their recommendations would be considered, but not necessarily adopted. In drafting the proposed rule, all HOME Task Force recommendations were reviewed and to the extent they were consistent with Board policy and the Department's goals, staff attempted to incorporate them into the draft rule.

GENERAL COMMENT (62): Commenter states the HOME Advisory Task Force, as well as staff, recommended that the Match Guidelines be revised to allow for all eligible match sources. While the Match Guidelines are not in 10 TAC, it is reasonable for the Board to revise the Match Guidelines as recommended by the HOME Advisory Task Force and staff as soon as possible.

STAFF RESPONSE: It is not necessary to revise the Department's Match Guidelines since all eligible match sources are already accepted by the Department. Comment is not specific to what sources are not acceptable to the Department. Additionally, there was no recommendation from the HOME Task Force regarding eligible match sources.

COMMENT (60,65,66): Section 53.2(72). The definition of "Persons with Disabilities" should be inclusive of households with a child or children who have disabilities. Children deserve access and that the increased expenses of living with a disability are also increased expenses for children and their families.

STAFF RESPONSE: Staff concurs with the comments and recommends the following language:

(72) Persons with Disabilities--A Household composed of one or more Persons, at least one of whom is a person, who has a disability that is a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. A Person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability and as further defined at 24 CFR §92.2.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rules ensure compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq) or any other affordable housing program.

§53.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--HOME Investment Partnership Act at Title II of the Cranston-Gonzalez National Affordable Housing Act as amended, at 42 USC §§12701, et seq.

(2) Activity--A single housing unit with a unique physical address. An activity may also refer to an individual Project or site.

(3) Administrative Deficiencies--The absence of information or a document from the application as required in this Chapter or applicable NOFA.

(4) Administrator--The Person responsible for performing under a Contract with the Department.

(5) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest.

(6) Affiliated Party--A person in a relationship with the Administrator on a Contract with the Department.

(7) Annual Income--As defined in 24 CFR §92.203.

(8) Applicant--A Person who has submitted to the Department an Application for Department funds or other assistance.

(9) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(10) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable NOFA.

(11) Application Submission Procedures Manual (ASPM)--The manual that sets forth the procedures, forms, and instructions for the completion and submission of an Application to the Department.

(12) Area Median Family Income (AMFI)--The income estimated and determined by HUD as the median family income with adjustments for family size and geographic locations.

(13) Articles of Incorporation--The document that sets forth the basic terms for a corporation's existence and is the official recognition of the corporation's existence.

(14) Board--The governing board of the Texas Department of Housing and Community Affairs.

(15) Business Plan--The written document that for the purposes of CHDO certification outlines the CHDO's plan for developing eligible housing activities, its internal operations, and citizen participation process.

(16) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the Articles of Incorporation. Bylaws and amendments to Bylaws must be formally adopted in the manner prescribed by the organization's Articles of Incorporation or current Bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend Bylaws.

(17) CFR--Code of Federal Regulations.

(18) Chapter 2306--The enabling statute for the Department found in the Texas Government Code.

(19) CHDO Service Area--A Community in which a CHDO owns, developed and/or sponsored CHDO eligible housing activities for the low income residents of the city/place or county they serve.

(20) Colonia--A geographic area that is located in a county some part of which is within 150 miles of the international border of this state that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) Has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(B) Has the physical and economic characteristics of a Colonia, as determined by the department.

(21) Colonia Housing Standards--The Department's HUD approved housing standards that allow Colonia residents the opportunity to rehabilitate their homes when located in a designated Colonia.

(22) Community--Urban areas means one or several Neighborhoods, a city, a county, or a metropolitan area and for Rural Areas means one or several Neighborhoods, a town, a village, a county or multi-county area, but not the whole state. For purposes of this Chapter, the Applicant should clearly define the area. For example, the city of Dallas would not include all of Dallas and Collin counties but Dallas and Collin counties would include the city of Dallas.

(23) Community Housing Development Organization (CHDO)--A private nonprofit, community-based service organization that has obtained or intends to obtain staff with the capacity to develop affordable housing for the community it serves in accordance with 24 CFR §92.2 and which is certified as such by the Department. To be certified as a CHDO by the Department, the organization must act in the capacity of Developer, Owner or Sponsor as defined in this chapter.

(24) Community Housing Development Organization (CHDO) Developer--The CHDO:

(A) Either owns a Property and develops a Project, or has a contractual obligation to a property owner to develop a Project; and

(B) Performs all the functions typically expected of for-profit Developers, and assumes all the risks and rewards associated with being the Project Developer.

(i) For RHD, the CHDO must obtain financing, and Rehabilitate, Reconstruct or construct the Project. If it owns the Property, the CHDO may maintain ownership and manage the Project over the long term. If it does not own the Property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

(ii) For HBA, the CHDO must obtain Project financing, Rehabilitate, Reconstruct or construct the dwelling(s), and have title of the property and the HOME loan/grant obligations transferred to a HOME-qualified homebuyer within a specified timeframe. If it does not own the Property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

(25) Community Housing Development Organization (CHDO) Owner--The CHDO holds valid legal title to or has a long-term (99-year minimum) leasehold interest in a rental Property. The CHDO may be a Development Owner with one or more Persons. If it owns the Project in partnership, it or its wholly-owned nonprofit or for-profit subsidiary must be the managing General Partner with effective control (i.e., decision-making authority) of the Project. The CHDO may be both Development Owner and Developer, or may have another entity as the Developer.

(26) Community Housing Development Organization (CHDO) Sponsor--The CHDO:

(A) For RHD, the CHDO may develop a Project that it solely or partially owns and agrees to convey ownership to a second non-profit organization at a predetermined time prior to or during Development or upon completion of the Development of the Project. The HOME funds are invested in the Project owned by the CHDO. The CHDO Sponsor selects prior to commitment of HOME funds the non-profit organization that will obtain ownership of the Property. The non-profit assumes from the CHDO the HOME obligation (including any repayment of loans) for the Project at a specified time. If the Property is not transferred to the non-profit organization, the CHDO Sponsor remains liable for the HOME loan/grant obligation. The non-profit organization must be financially and legally separate from the CHDO Sponsor. The CHDO Sponsor must provide sufficient resources to the non-profit organization to ensure the Development and long-term operation of the Project.

(B) For HBA, the CHDO owns a Property, then shifts responsibility for the Project to another nonprofit at some specified time in the Development process. The second nonprofit, in turn, transfers title along with the HOME loan/grant obligations and recapture requirements to an Income Eligible Household within a specified timeframe. The HOME funds are invested in the Property owned by the CHDO. The other nonprofit being sponsored by the CHDO acquires the completed units, or brings to completion the Rehabilitation or construction of the Property. At completion of the Rehabilitation or construction, the second nonprofit is required to sell the Property along with the HOME loan/grant obligations to an Income Eligible Household.

(C) For either type of sponsorship, the CHDO must own the Property prior to the development phase of the project.

(27) Community Housing Development Organization Pre-Development Loan--A form of assistance in which funds are made available as loans to cover those costs outlined in 24 CFR §92.301.

(28) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria. Applications will be reviewed in accordance with the rules for application review published in the NOFA and the ASPM.

(29) Conflict of Interest--A conflict between the private interests and the official responsibilities of a Person in a position of trust, as specified in 24 CFR §92.356.

(30) Consolidated Plan--The State Consolidated Plan prepared in accordance with 24 CFR, Part 91, which describes the needs,

resources, priorities and proposed activities to be undertaken with respect to certain HUD programs and is subject to approval annually by HUD.

(31) Contract--The executed written agreement between the Department and an Administrator or Development Owner performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(32) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership or voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

(33) Deobligated Funds--The funds released by an Administrator or Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and an Administrator or Development Owner.

(34) Department--The Texas Department of Housing and Community Affairs.

(35) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(36) Development--A Project that has a construction component, either in the form of New Construction or Rehabilitation of multi-unit or single family residential housing.

(37) Development funding--

(A) A loan or grant; or

(B) An in-kind contribution, including a donation of real Property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable Development.

(38) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract approved by the Department and is the Person responsible for performing under the Contract with the Department.

(39) Development Site--The area, or if scattered site, areas, for which the Development is proposed to be located and is to be under the Development Owner's Control.

(40) Executive Award and Review Advisory Committee (EARAC)--The Department committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities.

(41) Expenditure--An approved expense evidenced by documentation submitted by the Administrator or Development Owner to the Department for purposes of drawing funds from HUD's IDIS for work completed, inspected and certified as complete, and as otherwise required by the Department.

(42) Family--Includes but is not limited to the following types of families as defined in 24 CFR §5.403:

(A) A family with or without children;

(B) An elderly family;

(C) A near elderly family;

(D) A disabled family;

(E) A displaced family;

(F) The remaining member of a tenant family; or

(G) A single person who is not an elderly or displaced person or a person with disabilities or the remaining member of a tenant family.

(43) Feasibility Analysis--The process of performing a budgetary justification for Reconstruction which compares the cost of Rehabilitation to the replacement costs of a housing unit for the purposes of OCC.

(44) FHA §203(b) Mortgage Limits ("§203(b) Limits")--The mortgage limits established under §203(b) of the National Housing Act (12 USC §1709(b) which may be obtained from the HUD Field Office.

(45) Final Rule--The current final rule as published by HUD as 24 CFR, Part 92 with amendments.

(46) General Contractor--A Person who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors.

(47) General Partner--A Person or Persons who is identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(48) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. For purposes of this Chapter, a grant includes a forgivable loan.

(49) Homebuyer Assistance Program (HBA)--A Program Activity for the purpose of providing HOME funds for acquisition, acquisition with Rehabilitation, down payment, closing costs, and gap financing assistance provided to Income Eligible Households. Rehabilitation may be combined with HBA to provide contract for deed conversions and assist Person with Disabilities.

(50) HOME--The HOME Investment Partnerships Program at 42 USC §§12701-12839 and the regulations promulgated thereafter at 24 CFR, Part 92.

(51) Household--One or more persons occupying a housing unit (24 CFR §92.2).

(52) HUD--The United States Department of Housing and Urban Development, or its successor.

(53) HUD's Maximum Per-unit Subsidy Amount ("221(d)(3) limits")--The per-unit dollar limitations established under §221(d)(3)(ii) of the National Housing Act for elevator-type projects that apply to the area in which the housing is located.

(54) IDIS--The electronic grants management information system named the Integrated Disbursement and Information System established by HUD to be used tracking and reporting HOME funding progress.

(55) Income Eligible Households--The federal definition which is:

(A) Low-Income Households--Households whose Annual Incomes do not exceed 80% of the AMFI.

(B) Very Low-Income Households--Households whose Annual Incomes do not exceed 50% of the AMFI.

(C) Extremely Low Income Households--Households whose Annual Incomes do not exceed 30% of the AMFI.

(56) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted units;

(B) Have separate and specific leasing offices and leasing personnel exclusively for the age restricted units;

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted units;

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;

(E) Share the same Development site;

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(57) Land Use Restriction Agreement (LURA)--An agreement between the Department and a Person related to a specific Property or Properties which is binding upon a Person's successors in interest, filed with the responsible recording authority, and encumbers the Property with respect to requirements in this Chapter, Chapter 2306 of the Texas Government Code and the Final Rule.

(58) Loan--Financial assistance that is awarded in the form of money and an executed written agreement between the Department and Person for a specific purpose and that is required to be repaid.

(59) Manufactured Housing Unit (MHU)--As defined by HUD is a structure transportable in one or more sections which, in traveling mode, is 8 body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(60) Match--Eligible forms of non-federal contributions to a Program Activity or Project in the forms specified in 24 CFR §92.220, CPD Notice 97-03 and the Department's Match Guide.

(61) Material Noncompliance--as is defined in 10 TAC, Chapter 60, Subchapter A of this title.

(62) Modular Housing--As defined by HUD is a home built in sections in a factory to meet state, local, or regional building codes. Once assembled, the modular unit becomes permanently fixed to one site.

(63) Mortgagor--The Person who borrows money and uses his or her real property as collateral and security for the payment of the debt.

(64) Neighborhood--As defined by HUD, a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a Unit of General Local Government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a Unit of General Local Government (24 CFR §92.2).

(65) New Construction--Any Development not meeting the definition of Rehabilitation.

(66) NOFA--Notice of Funding Availability, published in the *Texas Register.*

(67) Nonprofit organization--A public or private organization that:

(A) Is organized under state or local laws;

(B) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) Has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) A private nonprofit organization's pending application to the IRS for exemption status under §501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement.

(68) Open Application Cycle--A defined period of time during which Applications may be submitted according to a published NOFA and which will be reviewed on a first-come, first-served basis until all funds available are committed, or until the NOFA is closed.

(69) Owner-Occupied Housing Assistance (OCC)--A Program Activity for the purpose of providing HOME funds for the Rehabilitation of existing owner-occupied housing for Income Eligible Households. Housing assistance for disaster relief is provided under this Program Activity.

(70) Participating Jurisdiction (PJ)--Any state or Unit of General Local Government, including consortia as specified in 24 CFR §92.101, designated by HUD in accordance with 24 CFR §92.105.

(71) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(72) Persons with Disabilities--A Household composed of one or more Persons, at least one of whom is a Person, who has a disability that is a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing condi-

tions. A Person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability and as further defined at 24 CFR §92.2.

(73) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §§12701, et seq. and as provided in the Consolidated Plan and may include any households composed of one or more persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(74) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees;

(C) Predevelopment costs do not include general operational or administrative costs.

(75) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, special limited partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(76) Principal Residence--The primary housing unit a Person or Household inhabits.

(77) Program Activity--The specific purposes for which HOME funds are used and required in the Contract with the Administrator.

(78) Program Income--The gross income received by the Department, Development Owners or Administrators directly generated from the use of HOME funds or matching contributions as further described in 24 CFR §92.2.

(79) Project--A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under 24 CFR §92.2.

(80) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(81) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older.

(82) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a market analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(83) Received Date--The date and time that an Application is physically received by the Department.

(84) Rehabilitation--The improvement or modification of an existing residential development through an alteration, addition, or enhancement. The term includes the demolition of an existing residential development and the Reconstruction of any development units, but does not include the improvement or modification of an existing residential development for the purpose of an adaptive reuse of the development. In accordance with the federal definition of Reconstruction at 24 CFR §92.2, the term also means the demolition and rebuilding, on the same lot, of housing standing on the site at the time of commitment of HOME funds. The number of units on the lot may not be decreased or increased as part of the rehabilitation, but the number of rooms per unit may be increased or decreased. Rehabilitation also includes replacing an existing substandard MHU with a new MHU.

(85) Rental Housing Development (RHD)--A Program Activity and Project for the purpose of providing HOME funds for the acquisition, New Construction or Rehabilitation of multi-family or single family rental housing, or conversion of commercial property to rental housing for Income Eligible Households.

(86) Rural area--An area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) In an area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an area that is located in a municipality with a population of more than 50,000.

(87) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 units.

(88) Service Area--The city, county and/or place identified in the Contract that the Administrator will serve.

(89) Set-Aside--A statutory or federally mandated reservation of a portion of available funds or units for specific types of housing priorities, Program Activities or geographic locations.

(90) Single Family Housing Development--A Program Activity and Project for the purpose of providing HOME funds for the acquisition, and/or New Construction or Rehabilitation of affordable single family housing units Income Eligible Households to acquire homeownership.

(91) State Recipient--A Unit of General Local Government designated by the Department to receive HOME funds.

(92) Subrecipient--A public agency or nonprofit organization selected by the Department to administer all or a portion of the Department's HOME program. A public agency or nonprofit that receives HOME funds solely as a developer or owner of housing is not a Subrecipient. The Department's selection of a Subrecipient is not subject to the procurement procedures and requirements.

(93) TAC--Texas Administrative Code.

(94) Tenant-Based Rental Assistance (TBRA)--A Program Activity for the purpose of providing HOME funds for rental subsidy and security and utility deposit assistance to Income Eligible Households.

(95) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of Rehabilitation and acquisition.

(96) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee or developer fee.

(97) Unit of General Local Government--A city, town, county, or other general purpose political subdivision of the State; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR §92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. An urban county is considered a unit of general local government under the HOME Program.

(98) Urban Area--The area that is located within the boundaries of a primary metropolitan statistical area other than an area that is described by paragraph (86) of this section.

(99) USC--The United States Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706624
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 5, 2007
For further information, please call: (512) 475-3916

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SUBCHAPTER B. ALLOCATION OF FUNDS

10 TAC §53.20, §53.21

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter B, §53.20 and §53.21, concerning HOME Rules without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6938) and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rules ensure compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to

carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §§53.30 - 53.37

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter C, §§53.30 - 53.37, concerning HOME Rules. Sections 53.31 and 53.32 are adopted with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6939). Sections 53.33 - 53.37 are adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

STAFF COMMENT: Section 53.31(c)(2). Staff recommends an administrative change to delete the word'down' for more accurate wording.

COMMENT (62): Section 53.31(b). Commenter requests further clarification of ownership documents that must be provided in this section of the rule since Warranty Deeds, Deeds of trust, and Life Estates are not specifically stated.

STAFF RESPONSE: The commenter seems to be referring to documents that may be used as evidence of ownership. However, this section of the rule provides what forms of ownership are acceptable to receive HOME assistance. Acceptable evidence of homeownership is provided in the HOME Program Manual. No change to proposed rule is recommended.

COMMENT (62): Section 53.31(g). Language in Draft Rule: "(g) The maximum amount of assistance to an eligible Household is based on Household size:

Rehabilitation that is Reconstruction for 1-4 person Household, $60,000

Rehabilitation that is Reconstruction for 5-6 person Household, $67,500

Rehabilitation that is Reconstruction for 7 or more person Household, $75,000

Rehabilitation that is not Reconstruction, $30,000"

Commenter requests increases be taken into consideration for situations such as On Site Sewer Facilities (OSSF) and historic properties. Comments include that if a septic system needs to be replaced, these figures should adjust up $5,000 for a standard system and $7,500 for an anaerobic system. Additionally, if the home being assisted must be rehabilitated due to a historical determination from the Texas Historical Commission, then the above figures plus an additional $10,000 should apply to rehabilitation without reconstruction. Lastly, commenter suggests using the CPI index for residential construction in Texas for these limits with automatic adjustments upward each year, requiring no Board action.

STAFF RESPONSE: As has been allowed in the past, Department management will continue to review and allow budget revisions on a case-by-case basis for On Site Sewer Facilities. Staff does not believe the intent of the program is to rehabilitate historic homes and does not recommend an increase. Staff does not recommend using the CPI index for annual, automatic adjustments to these assistance limits. These limits can be reviewed during the rulemaking process or adjusted through Board action at any time during the year, if necessary. No recommended change to the proposed rule.

COMMENT (62): Section 53.31(j). Language in Draft Rule: "(j) The form of assistance to an eligible Household is based on AMFI except in the instances of a MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. For Rehabilita-

tion that is Reconstruction (excluding contract for deed conversion), the Loan amount is based upon the amount of assistance minus the appraised value of the existing housing unit. Upon completion of the Reconstruction, the Department will reduce the Loan amount with a principal reduction for any change orders that resulted in a net decrease in the amount of assistance, a new decrease of the after-improved value and 10% of the after improved value of the Housing unit."

Commenter questioned why this language is being changed from the 2006 program rules of including the value of the land when calculating the loan balance. If this program is to remain a loan program, instead of a grant program, the appraised value used to calculate the loan basis should include the land value.

STAFF RESPONSE: The appraised value of the existing housing unit cited in the rule does include the land value. Staff has reviewed the Board transcripts and is recommending the following administrative revision to correctly calculate the original loan amount and final loan balance after adjustments are made for equity, as was intended by the Board:

Section 53.31(j). The form of assistance to an eligible Household is based on AMFI except in the instances of a MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. In accordance with Rider 5 of the Department's Legislative Appropriation, the Department shall use the state average median family income in determining the form of assistance as prescribed in Figure: 10 TAC §53.31(j) for eligible Households living in those counties where the area median family income is lower than the state average median family income. For Rehabilitation (excluding contract for deed conversion), the Loan amount is based upon the amount of assistance to be provided to the household. Once construction is complete, the loan balance will be determined by subtracting from the'as complete' final appraised value of the housing unit, the appraised value of the existing housing unit (initial appraisal) and 10% of the 'as complete' final appraised value. To ensure the correct equity credit is provided, the Department will reduce the Loan amount with a principal reduction in the amount necessary to arrive at the correct loan balance, taking into account any change orders that resulted in a net decrease or increase in the amount of assistance.

COMMENT (62): Section 53.31(j). Commenter states that requiring repayment for people below 50% AMFI should not be the goal of the program. In many Texas counties a family of two, just over 30% AMFI, with a gross income as low as $863 a month should receive assistance in the form of a grant. Households with incomes below the State of Texas 50% AMFI (table below) should receive assistance in the form of a grant. Households between 50% AMFI and the following annual incomes should receive assistance in the form of a 5-year forgivable loan that is secured with a simple promissory note:

Household size of 1, Annual Income of $24,900

Household size of 2, Annual Income of $28,450

Household size of 3, Annual Income of $32,000

Household size of 4, Annual Income of $35,550

Household size of 5, Annual Income of $38,400

Household size of 6, Annual Income of $41,250

Household size of 7, Annual Income of $44,100

Household size of 8, Annual Income of $46,950

Commenter suggests that these figures be adjusted up in an amount equal to the increase in Social Security benefits at the beginning of each calendar year. Any households assisted under a Disaster Relief Activity should receive assistance in the form of a grant, as should any household with a disabled member or household with an elderly (over 62) member.

STAFF RESPONSE: It appears that the commenter is referring to counties affected by Rider 5 of the Department's Legislative Appropriation since the State of Texas 50% AMFI is referenced. Language used in this rider in previous years established income limits that were closest to the State of Texas 50% AMFI. However, staff is uncertain which AMFI levels are referenced in the chart provided by the commenter. The Board established the loan policy for the OCC Program in February 2006 and staff agrees with the policy established. HUD is supportive of utilizing loans to provide a Participating Jurisdiction (PJ) the ability to recapture funds. Furthermore, numerous local Texas PJ's and large State PJ's require secured loans as the form of assistance for their owner occupied rehabilitation programs. Staff recommends the following language to address Rider 5 eligible households.

Section 53.31(j). The form of assistance to an eligible Household is based on AMFI except in the instances of a MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. In accordance with Rider 5 of the Department's Legislative Appropriation, the Department shall use the state average median family income in determining the form of assistance as prescribed in Figure: 10 TAC §53.31(j) for eligible Households living in those counties where the area median family income is lower than the state average median family income. For Rehabilitation (excluding contract for deed conversion), the Loan amount is based upon the amount of assistance to be provided to the household. Once construction is complete, the loan balance will be determined by subtracting from the'as complete' final appraised value of the housing unit, the appraised value of the existing housing unit (initial appraisal) and 10% of the 'as complete' final appraised value. To ensure the correct equity credit is provided, the Department will reduce the Loan amount with a principal reduction in the amount necessary to arrive at the correct loan balance, taking into account any change orders that resulted in a net decrease or increase in the amount of assistance.

COMMENT (66): Section 53.31(j). Based on the added expenses and administrative burden to the contract administrator and consumers for the requirement of a closing, termed deferred forgivable loans for the Owner-Occupied Activity are recommended--particularly for serving households with a member with a disability.

STAFF RESPONSE: Staff understands the concerns expressed by commenters requesting a return to grants and the potential hardship created with repayable, amortizing loan for households at or below 60% AMFI, especially when taking into consideration that elderly or disabled households' incomes are typically declining when the assistance is provided and considering the current foreclosure rates nationwide. Since a deferred, forgivable loan will ensure an enforceable lien against the property assisted and an ability to recapture funds, staff recommends changing Figure: 10 TAC §53.31(j) to include the following:

For Rehabilitation or Reconstruction, where AMFI is less than or equal to 30%, the loan is a 0% interest, 5 year deferred, forgivable Loan.

For Rehabilitation or Reconstruction, where AMFI is greater than 30% and less than or equal to 50%, the loan is a 0% interest, 15 year deferred, forgivable Loan.

For Rehabilitation or Reconstruction, where AMFI is greater than 50% and less than or equal to 60%, the loan is a 0% interest, 20 year deferred, forgivable Loan.

For Rehabilitation or Reconstruction, where AMFI is greater than 60% and less than or equal to 80% AMFI, the loan is a 0% interest, 20 year term repayable Loan.

COMMENT (68): Section 53.31(j). Commenter states, regarding the OCC Program, that changes in match requirements and form of assistance provided have made it difficult to assist the poor in the community. Most of the potential applicants are elderly and cannot commit to five-year forgivable loans or mortgages.

STAFF RESPONSE: Match requirements will be described in each NOFA and staff agrees with the recommendations made by the HOME Task Force regarding adjustments for population in determining the city or county's match requirement. Additional analysis must be performed in order to ensure that this method of determining the match requirement of Contract Administrators will allow the Department to meet its Federal match requirement.

The Board established the loan policy for the OCC Program in February 2006 and staff agrees with the policy established. HUD is supportive of utilizing loans to provide a Participating Jurisdiction (PJ) the ability to recapture funds. Furthermore, numerous local Texas PJ's and large State PJ's require secured loans as the form of assistance for their owner occupied rehabilitation programs. No change to proposed rule is recommended.

COMMENT (56, 61): Section 53.31(j). Commenter states the HOME Task Force recommended a return to a grant program for those at 30% or less AMFI and those on Rider 5 (which allows those at 50% or less to be assisted as if they are 30% or lower in cases where the County's AMFI is lower than that of the State). We ask the Board to adopt the HOME Task Force recommendations, retaining a 5-year deferred forgivable loan for those at 31%-50% AMFI (non-Rider 5). Under their recommendation, those at 51-80% would require an amortized direct loan with monthly payment of principal and interest with a maximum rate of 2% per year.

STAFF RESPONSE: Staff is recommending a change to the proposed rule to address Rider 5 eligible households as noted earlier. The Board established the loan policy for the OCC Program in February 2006 and staff agrees with the policy established. HUD is supportive of utilizing loans to provide a Participating Jurisdiction (PJ) the ability to recapture funds. Furthermore, numerous local Texas PJ's and large State PJ's require secured loans as the form of assistance for their owner occupied rehabilitation programs.

COMMENT (62): Section 53.31(m). Commenter stated the Department does a disservice by penalizing householder family members who earn less than 80% AMFI by placing their home at risk should the original assisted homeowner be forced to relocate due to medical reasons. To reduce the unnecessary burden on TDHCA staff, it is strongly recommended that any loan balance (forgivable or otherwise) be forgiven upon the death of the head of household, if the head of household has to move due to incapacitation (i.e. nursing home, with a child, etc.), or if the home must be sold due to unexpected medical expenses. In addition, the HOME program eligibility is based on 80% AMFI and this should be the standard for loan forgiveness when a low or moderate-income household obtains the house after the death of the initial party assisted.

STAFF RESPONSE: Through Rider 5 of the Department's Legislative Appropriation, the State Legislature has adopted an express goal of assuring that a significant portion of the funds provided under the HOME Program go to persons whose income is 30% of the statewide AMFI or below. The Department has expressed its desire to meet this requirement by developing rules that encourage administrators to seek out program participants who meet these objectives. The purpose of having a length of time to live in the home encourages that the program will go directly to those who need it the most by creating an "affordability period" type requirement. While all persons eligible for this program should be able to benefit, where the state has identified target populations, the Department will follow that guidance. Where possible, the Department also looks to recycle funds for those persons who can afford to repay a portion of their loan and has created a tiered system to promote that goal as well. This section of the proposed rule was also written to be consistent with general HUD affordability requirements. No change to proposed rule is recommended.

COMMENT (62): Section 53.31(n). Commenter stated, to reduce the unnecessary burden on TDHCA staff, it is strongly recommended that any loan balance (forgivable or otherwise) be forgiven upon the death of the head of household, if the head of household has to move due to incapacitation (i.e. nursing home, with a child, etc.), or if the home must be sold due to unexpected medical expenses.

STAFF RESPONSE: Staff does not recommend a change to the proposed rule.

STAFF COMMENT: Section 53.32(b). Staff recommends an administrative change to delete the word'down' for more accurate wording.

COMMENT (61): Section 53.32(e) Commenter questioned the allowability of homebuyer assistance up to $15,000 for a disabled person. Commenter indicates that this is confusing because homebuyer assistance is a mathematical formula and has nothing to do with a person's physical ability. The maximum should be the same, either $15,000 or $10,000. If more money is needed to change the house to make it accessible, it is fine and it is indicated in rule to be $25,000.

STAFF RESPONSE: Based on staff discussion with organizations that serve Persons with Disabilities, the household income that includes a person with a disability is typically affected if they attempt to save money. This may result in a reduction in benefits or income received. Furthermore, most of these organizations tier the level of assistance based on income level. Therefore, households with a lower income level, received the greatest amount of assistance and households with a higher income level, receive the least amount of assistance, typically $3,000 max. Staff does not recommend a change to the proposed rule.

STAFF COMMENT: Section 53.32(j). Staff would like to meet federal affordability requirements for the Homebuyer Assistance Program as defined in 24 CFR §92.254. Staff recommends deleting subsection (j) in order meet federal affordability requirements. This deletion requires a renumbering of this section and a revision to the subsection (m) as noted above.

BOARD COMMENT: Section 53.31(m) Per Board member discussion during the Action Item to adopt the proposed rule at the December 20, 2007 Board meeting, the following language was added to this section: the Department shall use the state average median family income for eligible Households living in those counties where the area median family income is lower than the state average median family income, as defined in Rider 5 of the Department's Legislative Appropriation, to apply this subsection.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rules ensure compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.31. Owner-Occupied Housing Assistance Program (OCC).

(a) Eligible activities are limited to the Rehabilitation or Reconstruction of existing owner-occupied housing. The Rehabilitation of a MHU is not an eligible activity.

(b) Eligible forms of homeownership are limited to fee simple title to the real property, a 99-year leasehold interest in the real property, a 50-year leasehold interest on trust, a 50-year leasehold on restricted Indian lands, or ownership or membership in cooperative or a mutual housing project that constitutes homeownership under Texas law.

(c) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act, §19(1);

(2) the unit is permanently installed;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(d) The Household must comply with the following initial eligibility requirements:

(1) own and occupy the single family unit as its Principal Residence;

(2) be an Income Eligible Household;

(3) be located within the Administrator's Service Area; and

(4) meet all other eligibility requirements.

(e) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(f) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(g) The maximum amount of assistance to an eligible Household is based on Household size:

(1) Rehabilitation that is Reconstruction for 1 - 4 person Household: $60,000

(2) Rehabilitation that is Reconstruction for 5 - 6 person Household: $67,500

(3) Rehabilitation that is Reconstruction for 7 or more person Household: $75,000

(4) Rehabilitation that is not Reconstruction: $30,000

(h) The minimum amount of assistance to an eligible household is $1,000.

(i) The estimated value of the housing unit, after Rehabilitation or Reconstruction, must not exceed the HUD 203(b) Limits.

(j) The form of assistance to an eligible Household is based on AMFI except in the instances of a MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. In accordance with Rider 5 of the Department's Legislative Appropriation, the Department shall use the state average median family income in determining the form of assistance as prescribed in Figure: 10 TAC §53.31(j) for eligible Households living in those counties where the area median family income is lower than the state average median family income. For Rehabilitation (excluding contract for deed conversion), the Loan amount is based upon the amount of assistance to be provided to the household. Once construction is complete, the loan balance will be determined by subtracting from the'as complete' final appraised value of the housing unit, the appraised value of the existing housing unit (initial appraisal) and 10% of the 'as complete' final appraised value. To ensure the correct equity credit is provided, the Department will reduce the Loan amount with a principal reduction in the amount necessary to arrive at the correct loan balance, taking into account any change orders that resulted in a net decrease or increase in the amount of assistance.
Figure: 10 TAC §53.31(j)

(k) When a MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the activity is considered acquisition and will trigger affordability requirements for homeownership as defined by 24 CFR §92.254. (Refer to §53.14 of this chapter.)

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease, unless the Property is transferred by devise, descent or operation of law upon the death of the homeowner that is a Household whose Annual Income does not exceed 30% of the AMFI. The Department shall use the state average median family income for eligible Households living in those counties where the area median family income is lower than the state average median family income, as defined in Rider 5 of the Department's Legislative Appropriation, to apply this subsection.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the balance on the Loan will be paid at closing.

(o) Housing units assisted with HOME funds must meet or exceed the TMCS or CHS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this Chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule.

§53.32. Homebuyer Assistance Program (HBA).

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation of single family housing units.

(b) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act, §19(1);

(2) the unit is permanently installed;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(c) The Household must comply with the following initial eligibility requirements:

(1) occupy the single family unit as its Principal Residence;

(2) be an Income Eligible Household and for contract for deed conversion, the Households Annual Income must not exceed 60% AFMI;

(3) be located within the Administrator's Service Area; and

(4) meet all other eligibility requirements.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The maximum amount of assistance to an eligible Household for downpayment and closing cost assistance is the lesser of:

(1) $15,000 for Persons with Disabilities; or

(2) $10,000.

(f) The maximum amount of assistance for Rehabilitation that is not Reconstruction to an eligible PWD Household that is also using funds for acquisition is $20,000.

(g) The maximum amount of assistance to an eligible Household for acquisition and closing costs for a contract for deed conversion is $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

(h) The maximum amount of assistance for Rehabilitation to an eligible Household for a contract for deed conversion is limited to the OCC Program Activity requirements in §53.13(g) of this chapter.

(i) When a MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the maximum amount of assistance to an eligible Household is based on Household size:

(1) Rehabilitation that is Reconstruction for 1 - 4 person Household: $60,000

(2) Rehabilitation that is Reconstruction for 5 - 6 person Household: $67,500

(3) Rehabilitation that is Reconstruction for 7 or more person Household: $75,000

(j) The minimum amount of assistance to an eligible Household is $1,000.

(k) The purchase price of the housing unit, plus the value of the Rehabilitation or Reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD 203(b) Limits.

(l) The total amount of assistance under this section and Program Activity, including Rehabilitation and activities involving contract for deed conversion, a MHU being replaced with newly constructed housing (site-built), and a housing unit being replaced on an alternate site, will be provided in the form of a zero percent (0%) deferred, forgivable Loan with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(m) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(n) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(o) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(p) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised but the appropriate governmental authority without prior written consent of the Department unless the balance on the Loan will be paid at closing.

(q) Housing units assisted with HOME funds must meet or exceed the TMCS or CHS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this Chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule.

(r) This Program Activity is a CHDO-eligible activity.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

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Michael Gerber
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §§53.40 - 53.49

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter D, §§53.40 - 53.49, concerning HOME Rules as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6942). Section 53.48 is adopted with changes to the proposed text. Sections 53.40 - 53.47 and §53.49 are adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

COMMENT (62): Section 53.47. Commenter state the Department should allow the maximum award amount of $525,000 [7 x $75,000] for disaster relief instead of $500,000.

STAFF RESPONSE: A maximum award amount of $500,000 allows a Contract Administrator to serve 5-8 households with reconstruction depending on the maximum unit level of assistance. Staff does not recommend a change to the proposed rule.

STAFF COMMENT: Section 53.48. Staff did not clearly define a deadline date for deficiencies during Phase One, Two, or Three of the Open or Closed Cycle, Application Review Process in the initial Rule posting. In an effort to provide clarification on the review process, staff would like to make and administrative change adding to the proposed rule a deadline of 45 days from Received Date for Administrative Deficiencies during Phase One, a deadline of 45 days upon entering during Phase II, and a deadline of 30 days upon entering Phase Three for Open Cycle Application Review Process. Additionally, a recommended change of a deadline of 45 days from Received Date for Administrative Deficiencies for Phase One during Competitive Application Cycle.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rule ensures compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new chapter is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.48. Application Review Process.

(a) Applications received by the Department in response to an Open Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis, until such date when the Department makes notice to the public that an Open Application Cycle has been closed; and

(2) Each Application will be handled on a first-come, first-served basis as further described in this section. Each Application will be assigned a Received Date based on the date and time it is physically received by the Department. Then each Application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on its Received Date unless it does not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over Applications that may have an earlier Received Date but that did not timely complete a phase of review.

(A) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be for-

warded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two or Three will be reviewed for recommendation to the Board by the Committee.

(B) Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be reviewed for recommendation to the Board by the Committee.

(C) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.

(3) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Applications received by the Department in response to a Competitive Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis during the Application Acceptance Period as specified in the NOFA;

(2) Applications submitted and accepted by the Department will be reviewed for eligibility, threshold and selection criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM. A comprehensive review of financial feasibility for RHD and Single Family Development Program Activities will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. If applicable, a review of the CHDO Certification Application will be performed. The Department will issue a notice of any Administrative Deficiencies for items reviewed within 45 days of the Received Date. If Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the selection score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated; and

(3) Upon completion of review and no unresolved Administrative Deficiencies, the Application will be reviewed for recommendation to the Board by the Committee.

(c) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or selection criteria documentation and/or financial feasibility analysis. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. To cure an Administrative Deficiency, an Applicant must provide a clarification, further definition or exposition of an issue, an explanation as to why an Applicant has provided certain information, or resolution of a discrepancy where an Applicant has provided conflicting information. An Administration Deficiency may not be cured by substantially changing an Application or providing any new unrequested information. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any Set-asides, increase their award amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in this title or by amendment of an Application after a commitment or allocation of HOME funds.

(d) Decline to Fund. The Department may decline to fund any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Gerber
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SUBCHAPTER E. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.50

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter E, §53.50, concerning HOME Rules as published in the October 5, 2007, issue of the *Texas Register* (32 Tex. Reg. 6945). Section 53.50 is adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rule ensures compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new chapter is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. AWARD AND CONTRACTS

10 TAC §§53.70 - 53.73

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter F, §§53.70 - 53.73, concerning HOME Rules. Section 53.73 is adopted with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6948). Sections 53.70 - 53.72 are adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections

appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

COMMENT (56)(62): Sections 53.72 - 53.73. Commenter stated that this appears to be intended solely as a punitive measure with no purpose other than to create additional paperwork and "hoops" for the Administrators. Additionally, there is no technical assistance associated with an Administrator missing a benchmark. Commenter also stated the agency takes a period of several months to approve contract amendments. If this continues, benchmarks and contracts will expire while waiting for approval of contract amendment. Commenter asks the Board to replace this contract amendment policy regarding benchmarks with the policy recommended by the HOME Task Force for dealing with failure to meet benchmarks, as follows:

(1) If the first benchmark is missed by more than 30 days, the Department will contract the Administrator and their consultant (if any) to arrange a technical assistance visit.

(2) If the second benchmark is missed by more than 30 days and the plan of action agreed to by all parties has not been implemented, the Department will contact the Administrator and their consultant (if any), and the administrator will be required to provide full explanation of the reason(s), including extenuating circumstances, which have caused the second delay.

(a) If a reasonable explanation for the delay has been missed more than 30 days, the Administrator will continue to keep the Department informed of their progress on a monthly basis.

(b) If no reason can be provided for the second delay, the Department may de-obligate any unexpended funds, provided that demolition has not begun on home:

(i) For homes on which demolition has begun, and it is reasonable to assume completion prior to contract expiration, fund for those homes will not be de-obligated.

(ii) Any projects that have had no work started may have their funds de-obligated by the Department.

(3) De-obligation of funds due to expenditure issues will not prohibit the Administrator from participating in future HOME program funding cycles.

(4) Voluntary de-obligation of unexpended contract balance by the administrator will have no adverse effect on future participation in the HOME program.

STAFF RESPONSE: With the reorganization of the HOME Division and the institution of a Performance Management Team, Contract Administrators will be provided more timely responses to amendment requests, technical assistance and performance oversight. The team will be reviewing performance based on the benchmarks established in the proposed rule, providing technical assistance to help the CA reach the benchmark and recommend possible action regarding continued delays in progress or lack of performance. No change to proposed rule recommended.

COMMENT (56): §53.72(a)(1). Commenter states the HOME Task Force recommended a return to the 24-month contract length plus the 60 day grace period for OCC contracts. However, the proposed rules set a 22-month contract length, with a 20-month benchmark for completion of all work. Essentially, the 60-day grace period has been incorporated into the contract term itself. Commenter asks the board to act on the HOME Task Force's recommendation to change the proposed rules to reflect the 24-month contract term that is most realistic and appropriate for actual time required to implement a HOME project.

STAFF RESPONSE: Staff is confident that a 22-month contract term for the OCC Program is adequate since Contract Administrators will typically reconstruct or rehabilitate 5 homes under this program as the current maximum award amount is structured. No change to the proposed rule is recommended.

COMMENT (56)(62): Commenter asks the Board to change the proposed rules to reflect the recommendations of the HOME Task Force as seen below:

(1) Contract start date on the date it is executed by the TDHCA Executive Director

(2) Procurement of professional services should be allowed prior to the contract award.

(3) The following benchmark targets should apply to all contracts:

(a) 6 months - contract environmental clearance complete

(b) 12 months - application intake complete

(c) 18 months - site specific environmental clearance submitted to TDHCA

(d) 20 months - all set-up documentation submitted to TDHCA, committing 100% of the funds to be expended

(e) 24 months - All funds expended and all match supplied. (Follow with a 60-day grace period to submit trailing documents and draws.)

STAFF RESPONSE: §53.71 of the proposed rule states the contract will be effective when executed by all parties as requested by the Task Force. Additionally, staff has already administratively implemented this change in the 2007 contracts. The contract templates have been modified to allow the effective date of the contract to occur upon execution by the Department's Executive Director. The current contract provisions do not prohibit the procurement for professional services prior to the contract award, however, in order for the Contract Administrator to be aware of and correctly perform the necessary procurement procedures to ensure eligibility of the costs associated with the procurement itself and/or the goods and services obtained, the Contract Administrator should contact Department staff for information, technical assistance and/or training to ensure the ability to be reimbursed for those costs. Staff deem the benchmarks established in the proposed rule more accurately reflect the required performance targets to ensure contractual compliance within the contract term. No change to the proposed rule is recommended.

BOARD COMMENT: §53.73(b). The following language was added to this section per Board member discussion during the Action Item to adopt the proposed rule at the December 20, 2007

Board meeting: if the Administrator or Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rule ensures compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new chapter is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.73. Contract Amendments.

(a) Amendment requests to be approved by the Executive Director of the Department are allowable under the following circumstances:

(1) Time extensions. The Executive Director may collectively provide up to one six-month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual and non foreseeable circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual or non-foreseeable circumstances can not be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension; and

(2) Increase in funds. In the case of a modification or amendment to the dollar amount of the Contract, such modification or amendment does not increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater. Modifications and/or amendments that increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

(b) If the Administrator or Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

(c) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of this Chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.

(d) Accounting Requirements. Within 60 days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract. Failure of an Administrator or Development Owner to provide full accounting of funds expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Administrator or Development Owner.

(e) Individual benchmarks. Each benchmark is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706630
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 5, 2007
For further information, please call: (512) 475-3916

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SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §§53.80 - 53.86

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter G, §§53.80 - 53.86, concerning HOME Rules as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6950). Section 53.81 and §53.85 are adopted with changes. Sections 53.80, 53.82 - 53.84, and 53.86 are adopted without changes and will not be republished.

The chapter is divided into seven subchapters: (1) Subchapter A - General, (2) Subchapter B - Allocation of Funds, (3) Subchapter C - Program Activities, (4) Subchapter D - Application Requirements and Procedures, (5) Subchapter E - Community Housing Development Organizations (CHDO), (6) Subchapter F - Awards and Contracts, and (7) Subchapter G - Loans and Contract Administration. The new chapter is necessary to coordinate the Department's HOME program with rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the Regular Session of the 80th Texas Legislature.

Public hearings on the new chapter were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the new chapter were accepted by mail, e-mail, and facsimile through October 29, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter, starting with general comments for Chapter 53 as a whole, and ending with comments on §53.86.

Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comments were received from: (56) Langford Community Management Svcs; (60) Advocacy Incorporated; (61) Hunter & Hunter Consultants; (62) Grantworks; (64) Texas Association of Community Development Corporations (TACDC); (65) ADAPT; (66) UCP of Texas; (67) Community Development Corporation of Brownsville; (68) City of Corrigan; (69) HOME Task Force.

COMMENT (62): §53.80. Commenter indicates that this section appears to be helpful in reducing a little of the additional burden than the 2006 HOME Program rule changes placed on the Administrators. Commenters support the change of allowing the use of an as-built appraisal combined with the as-is appraisal and recommend allowing for an as-built appraisal, as presented in the proposed rules.

STAFF RESPONSE: Staff has reevaluated the use of an as-built appraisal and recommends changing this section to only allowing the final appraisal or as-complete appraisal since this ensures the most accurate market value of the housing unit once it is constructed and takes into account and change orders that may have increased or decreased the final value of the property. Please note that the final as-complete appraisal will be required to be submitted before the release of retainage to ensure the correct loan balance is calculated. Staff recommends deleting the language "and final appraisal or an as is and as built" from §53.80(e)(1).

COMMENT (62): §53.81(18). Commenter states the 4-month rule for demolition does not take into account the actual amount of time it takes to construct a unit (average time from construction demolition is 45 to 60 days). The recommendation is to ensure that the demolition of any housing unit does not occur less than the time allowed in the construction contract plus 15 calendar days (or, in the case of a MHU, the time allowed in the purchase, delivery, and set-up contract) to complete said home.

STAFF RESPONSE: Staff recommends changing this requirement to no less than 6 (six) months prior to the Contract end date since a loan closing will typically be required and this period of time will allow for document preparation, loan closing, demolition and completion of construction well in advance of the Contract end date.

STAFF COMMENT: §53.81(23). In order to allow enough time for loan closing and construction, staff recommends the following administrative change by adding language in §53.81(23) that also states "In the event that a loan closing is required for single family Rehabilitation or Reconstruction, non-development activities, all Project setups and support documentation must be submitted no later than one hundred eighty (180) days prior to the Contract end date."

COMMENT (66): §53.85. Commenter expresses concern that there was a lack of attention to soft costs related to barrier removal modification write-ups in the Owner-Occupied activity.

STAFF RESPONSE: The proposed limitations include both an initial inspection of $500 and a final inspection of $200 for units requiring rehabilitation (and reconstruction). Staff review of historical disbursement requests for architectural barrier removal reveals invoices indicating a charge of $550 for both the initial work write-up and final inspection. It is unclear why the commenter is concerned since the limitations proposed for this soft cost item allow a combined maximum of $700. No change is proposed.

COMMENT (68): Regarding the HOME Program Owner-Occupied activity, cities of comparable population and budget size were able to come up with required match and soft costs under the rules of the program in 2005, but may not be able to meet these requirements should match percentages and soft costs be adjusted as proposed. Commenter recommends restoring the program rules implemented in 2005.

STAFF RESPONSE: While match requirements will be considered in future Notices of Funding Availability (NOFA's), the proposed rule does not include any match requirements. Therefore, as this comment relates to required match, staff has no response. As it relates to soft costs limitations, staff recommendations are being proposed in the rule to increase some of the project costs and the overall maximum percentage of hard costs.

COMMENT (67): §53.85(a)(4). Commenter states the soft cost schedule as provided in Figure: 10 TAC §53.85(a)(4) requires the individualizing of over twenty (20) soft costs, project costs, and administrative costs with a price point which places nonprofit corporation seeking to administer OCC or HBA programs at a disadvantage to third-party providers of such services. Nonprofit housing corporations seeking to administer OCC or HBA programs would be required to track time and effort of individual in-house personnel, benefits associated with time, as well as associated direct expenses for each item listed in Figure: 10 TAC §53.85(a)(4), while no such burden would be placed on third party consultants or other providers who simply provide a bill for services to the Contact Administrator. The rule should be amended to provide that non profit corporations that are also an administrative entity, only be required to track project related soft costs as a general category by project and that they individual line item tracking listed in Figure: 10 TAC §53.85(a)(4) to be reduced to "project specific soft costs".

STAFF RESPONSE: Staff understands the commenter's request, however Contract Administrators that are performing these services in the administration of their Contract will also be subject to the line item caps but will be allowed to provide acceptable documentation to evidence that the costs are incurred by using a general soft cost category for the project that evidences conformance with the cost limitations. No change to the proposed rule is necessary.

COMMENT (56): Commenter asks the Board to curb the effort to limit soft costs and administrative costs from their present levels. Soft costs and administrative costs should be left at 12% and 4% respectively. In addition, commenter asks the Board to consider putting soft cost and administrative costs limitation and cap information in the Implementation Manual instead of the rules. If left in the rules, commenter requests the addition of a statement clearly explaining that there are other costs allowable and not capped. We ask that the list and caps, if not eliminated, be changed to reflect a realistic and comprehensive list of tasks and costs associated with managing a HOME OCC contract.

STAFF RESPONSE: Since the HOME Program Manual (Implementation Manual) is not a binding document, the Department believes the caps are properly located in the proposed rule. While the cost categories identified were based on a review of

historical project soft cost and administrative draw requests, the Department may approve, solely at the Department's discretion, cost categories and limitations not identified in the proposed rule. As it relates to soft costs limitations, staff recommendations are being proposed in the rule to increase some of the project costs and the overall maximum percentage of hard costs. Staff recommends adding the following language to the proposed rule "and cost categories and limitations not identified in the proposed rule.

COMMENT (61): Commenter raised issue with the cap for soft costs at 5% for manufactured housing. An example cited is in the situation when a manufactured housing unit averages about $43,000. Five percent (5%) is $2,200. Two appraisals and inspections can expend over $2,200 without preconstruction activities. A recommendation would be to move it back to ten percent (10%), otherwise manufactured housing will be taken out of the housing arena because they are not going to pay for those soft costs.

STAFF RESPONSE: Staff recognizes this issue, concurs and recommends a change to the proposed rule (Figure: 10 TAC §53.85(c)) to include:

Where Max Assistance is $60,000 for OCC - Reconstruction (includes MHU to site-built and contract for deed conversions), Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 16% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where Max Assistance is $67,500 for OCC - Reconstruction (includes MHU to site-built and contract for deed conversions), Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 14% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where Max Assistance is $75,000 for OCC - Reconstruction (includes MHU to site-built and contract for deed conversions), Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 12% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where OCC or HBA is Rehabilitation only, Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 24% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where Max Assistance is $60,000 OCC is a Reconstruct (replacement) with MHU, Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 12% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where Max Assistance is $67,500 OCC is a Reconstruct (replacement) with MHU, Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 10% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where Max Assistance is $75,000 OCC is a Reconstruct (replacement) with MHU, Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 8% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

Where HBA is Acquisition only for contract for deed conversion, Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 10% and Max Percentage for administrative costs based on Total Project Costs is allowed at 4%

Where HBA is Downpayment and closing costs only, the Max Percentage for soft costs based on Hard Costs or Project Costs is allowed at 10% and Max Percentage for administrative costs based on Total Project Costs is allowed at 2%

COMMENT (61): Commenter requests clarification in the charts to delineate those costs which are contract based rather than project or activity based.

STAFF RESPONSE: Staff recommends a clarification in the chart headers in Figure: 10 TAC §53.85(a)(4) and recommends adding language to §53.85(a)(1) as follows: "With the exception of Administrative Costs per Contract," these costs are maximums per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation "and cost categories and limitations not identified in the proposed rule".

COMMENT (62): Commenter states that limiting the number of inspections to four (4) is a very poor management decision. There will be no way for the Administrator to verify the construction quality if they are limited to only four (4) inspections. Commenter asks if TDHCA will accept responsibility for items covered-up or incorrectly installed due to the lack of oversight that this policy dictates?

The dollar value associated with many of these activities is less than the cost of providing the service, for example, $75.00 for recordkeeping; $75.00 will not even pay for the amount of copying that is required for each project file. Nor will this cap cover the labor involved with obtaining documents, filing documents, submitting documents to TDHCA and other agencies as required; the same can be said for the construction documentation, information services, financial management, and the required initial work write-up that is sometimes needed to demonstrate that reconstruction is necessary.

Finally, the above table does not include a complete list of the processes and activities that go into implementing a HOME Owner-Occupied Program. The costs for surveys (multiple if in a floodplain), insurance (homeowner's and flood), title commitment, title searches, document re-verification, monitoring, etc. are all left off of the above list. Considering the complexity of these projects, a comprehensive list is impractical to be included in the rules as this severely limits the ability for flexibility. We recommend the Department remove this list from the rules. The above can be part of the Implementation Manual, where items can be added as needed, as well as adjusted with market conditions. The additional costs associated with the loan program, implemented in the 2006 HOME Rules should be borne by TDHCA, not by the Administrators, therefore, all items required for loan closing that were not previously required, should be paid for with additional soft cost funds.

The commenter provided a proposed table for Project Soft cost or Administrative costs that they believed to be much more in line with the reality of implementing the OCC HOME Program:

For OCC Reconstruction, allowable Project or Administrative Cost for Application intake and processing should be $500

For OCC Rehabilitation, allowable Project or Administrative Cost for Application intake and processing should be $500

For OCC Reconstruction, allowable Project or Administrative Cost for Appraisal (limited to 2 at $500 max each) should be $1,000

For OCC Rehabilitation, allowable Project or Administrative Cost for Appraisal is N/A

For OCC Reconstruction, allowable Project or Administrative Cost for Appraisal services coordination and management $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Appraisal services coordination and management $200

For OCC Reconstruction, allowable Project or Administrative Cost for Surveying Services for Deferred Loan $1,000

For OCC Rehabilitation, allowable Project or Administrative Cost for Surveying Services for Deferred Loan $1,000

For OCC Reconstruction, allowable Project or Administrative Cost for Surveying Services coordination and management (Loan) $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Surveying Services coordination and management (Loan) $200

For OCC Reconstruction, allowable Project or Administrative Cost for Surveying Services for Flood Insurance $500

For OCC Rehabilitation, allowable Project or Administrative Cost for Surveying Services for Flood Insurance $500

For OCC Reconstruction, allowable Project or Administrative Cost for Surveying Services coordination and management (Flood) $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Surveying Services coordination and management (Flood) $200

For OCC Reconstruction, allowable Project or Administrative Cost for Homeowners Insurance $700

For OCC Rehabilitation, allowable Project or Administrative Cost for Homeowners Insurance $700

For OCC Reconstruction, allowable Project or Administrative Cost for Homeowners Insurance coordination and management $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Homeowners Insurance coordination and management $200

For OCC Reconstruction, allowable Project or Administrative Cost for Title Searches $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Title Searches $200

For OCC Reconstruction, allowable Project or Administrative Cost for Title Searches coordination and management $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Title Searches coordination and management $200

For OCC Reconstruction, allowable Project or Administrative Cost for Loan Closing coordination and management $500

For OCC Rehabilitation, allowable Project or Administrative Cost for Loan Closing coordination and management $500

For OCC Reconstruction, allowable Project or Administrative Cost for Document re-verification (income, taxes)$200

For OCC Rehabilitation, allowable Project or Administrative Cost for Document re-verification (income, taxes)$200

For OCC Reconstruction, allowable Project or Administrative Cost for Preparation of Site Plans $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Preparation of Site Plans $300

For OCC Reconstruction, allowable Project or Administrative Cost for Construction and disbursement documentation preparation $200

For OCC Rehabilitation, allowable Project or Administrative Cost for Construction and disbursement documentation preparation $200

For OCC Reconstruction, allowable Project or Administrative Cost for Environmental review $500

For OCC Rehabilitation, allowable Project or Administrative Cost for Environmental review $500

For OCC Reconstruction, allowable Project or Administrative Cost for Exempt administrative environmental $100

For OCC Rehabilitation, allowable Project or Administrative Cost for Exempt administrative environmental $100

For OCC Reconstruction, allowable Project or Administrative Cost for Final inspection $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Final inspection $300

For OCC Reconstruction, allowable Project or Administrative Cost for Information services $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Information services $300

For OCC Reconstruction, allowable for Initial inspection $500

For OCC Rehabilitation, allowable for Initial inspection $500

For OCC Reconstruction, allowable Project or Administrative Cost for Procurement of contractor $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Procurement of contractor $300

For OCC Reconstruction, allowable Project or Administrative Cost for Progress inspections $250

For OCC Rehabilitation, allowable Project or Administrative Cost for Progress inspections $250

For OCC Reconstruction, allowable Project or Administrative Cost for Pre-construction conference $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Pre-construction conference $300

For OCC Reconstruction, allowable Project or Administrative Cost for Project document preparation $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Project document preparation $300

For OCC Reconstruction, allowable Project or Administrative Cost for Punch list verification inspection $300

For OCC Rehabilitation, allowable Project or Administrative Cost for Punch list verification inspection $300

For OCC Reconstruction, allowable Project or Administrative Cost for Schedule of values $100

For OCC Rehabilitation, allowable Project or Administrative Cost for Schedule of values $100

For OCC Reconstruction, allowable Project or Administrative Cost for Work write-up $500

For OCC Rehabilitation, allowable Project or Administrative Cost for Work write-up $300

For OCC Reconstruction, allowable Project or Administrative Cost for Work write-up summary/cost estimate $400

For OCC Rehabilitation, allowable Project or Administrative Cost for Work write-up summary/cost estimate $400

For OCC Reconstruction, allowable Administrative Cost Only for Affirmative marketing plan $100

For OCC Rehabilitation, allowable Administrative Cost Only for Affirmative marketing plan $100

For OCC Reconstruction, allowable Administrative Cost Only for Financial management $300

For OCC Rehabilitation, allowable Administrative Cost Only for Financial management $300

For OCC Reconstruction, allowable Administrative Cost Only for Procurement of professional service provider $30

For OCC Rehabilitation, allowable Administrative Cost Only for Procurement of professional service provider $30

For OCC Reconstruction, allowable Administrative Cost Only for Recordkeeping $300

For OCC Rehabilitation, allowable Administrative Cost Only for Recordkeeping $300

For OCC Reconstruction, allowable Project Cost Only for Plans (market value) is N/A

For OCC Rehabilitation, allowable Project Cost Only for Plans (market value) is $200

For OCC Reconstruction, allowable Project Cost Only for Plans and specification manual (market value) is $1,500

For OCC Rehabilitation, allowable Project Cost Only for Plans and specification manual (market value) is N/A

For OCC Reconstruction, allowable Project Cost Only for Specification manual is N/A

For OCC Rehabilitation, allowable Project Cost Only for Specification manual is $200

STAFF RESPONSE: Other state Participating Jurisdictions allow typically 10-15% in soft costs and while they require loans, they do not have the typical expenses and legal requirements for loan closings as we do in Texas. For example, the appraisals add roughly $1,000 and a survey can require another $500 or more if the property has not been platted. The total project soft costs based on the caps is approximately 11% of the average hard cost of the unit. Once closing costs are included, the total project costs based on the caps is approximately 16% of the average hard cost of the unit. Since many of the soft costs can also be categorized as administrative costs, staff is recommending a reduction to the administrative costs percentage from 4% to 2% for any Rehabilitation or Reconstruction Projects or Activities (including replacement with a MHU). Additionally, staff recommends allowing the administrator to draw up to half of the total administrative costs percentage upon award of the contract for training, travel related to attend training and other expenses such as hiring a staff person to administer the program and/or procurement activities related to the obtaining a service provider. Staff is also recommending an increase in the Construction and disbursement document preparation category to allow for costs incurred in the coordination and management of requirements for the loan closing process such as title commitments, surveys, and appraisal.

Staff recommends that third-party closing costs have no cap imposed since they must be obtained at market value and recommends the following language: §53.85(a)(5) Third-party project costs related to loan closing requirements, such as appraisals, title insurance, tax certificates, and recording fees, are not subject to a maximum per Activity or Project. However, these costs are subject to the limitations of the maximum percentage of hard or project costs identified in subsection (c) of this section.

Therefore, the appraisal limitation was removed from Figure: 10 TAC §53.85(a)(4). However, staff is recommending a change to the proposed rule that limits the overall maximum percentage for soft costs, which will allow and include closing costs.

COMMENT (62): §53.85(b)(1). Commenter states that in rural communities, effective affirmative marketing can be a challenging, time consuming project. There are often limited media outlets, requiring a more "hands-on" approach than in a larger market. The additional costs associated with these challenges should be considered when capping fees. Commenter recommends an increase to $100.

STAFF RESPONSE: Staff concurs and has increased this cap to $100 per Contract.

COMMENT (62): §53.85(b)(2). Commenter states that in rural communities, it is often difficult to obtain documentation, requiring multiple trips to the courthouse and/or social security administration, both of which may be many miles away from the Administrators location. Often multiple trips are required to obtain an adequate number of qualified applicants; particularly with the new deferred forgivable loan and with new partially repayable and repayable loans, the application intake effort will only become more burdensome. Furthermore, the fees do not take into account that many more applicants are reviewed than are actually eligible and this situation will be magnified with all the new conditions. Commenter recommends an increase to the cap on this line item to $500.

STAFF RESPONSE: Staff concurs with this request and has increased this cap to $500, as recommended by commenter.

COMMENT (62): §53.85(b)(3). Commenter states that in rural communities, identifying appraisers willing to do this sort of work is a challenge, obtaining bids, and coordinating this service is time consuming and costly. The additional costs associated with these challenges should be considered when capping fees.

STAFF RESPONSE: A direct price quote method is typically what is required to procure an appraiser. Staff agrees in part with this request and is recommending an increase in the Construction and disbursement document preparation category to allow for costs incurred in the coordination and management of requirements for the loan closing process such as title commitments, surveys, and appraisal.

COMMENT (62): §53.85(b)(4). Commenter states most of the disbursement forms are not included in the above reference. Disbursement documentation is voluminous, raising both the cost of construction and the cost of implementation. None of this even takes into account the amount of time online input, approval process, and distribution to TDHCA takes. Commenter recommends an increase to the cap on this line item to $200.

STAFF RESPONSE: Staff agrees in part with this request and has recommended an increase to this item to $250.

COMMENT (62): §53.85(b)(5). Commenter states a member of the TDHCA monitoring staff has recently said that they are going to change they way they monitor the environmental files. Apparently all files will have to be put in a different order from what was previously described in the HOME Implementation manual (and had been previously accepted by TDHCA monitoring staff). Unfortunately, this is not an unusual occurrence; the Department should recognize that it costs time and money to re-arrange documents in a file. The additional costs associated with these challenges should be considered when capping fees. We recommend the Department increase the cap on this line item to more accurately reflect the cost incurred when conducting the environmental clearances and documentation of said clearances: $500 for project clearance and $100 for exempt administrative.

STAFF RESPONSE: Staff agrees in part with this request and has recommended an increase to this item to $400. However, exempt administrative is only one form that must be completed and staff has not recommended an increase to the item. The $400 cap is also in-line with draw documentation submitted in the past and the average number of required hours to complete on an average project.

COMMENT (62): §53.85(b)(7). Commenter states final inspections are very time consuming as they involve the inspector, the Administrator, the contractor and the Homeowner. It is during the final inspection that the homeowner is given detailed instruction on how to operate and maintain each piece of equipment in the home (HVAC, Water Heater, Filters, Drain Lines, Range, Refrigerator, Attic Access, GFCI, etc.). It is also at this time that the warranty process is gone over in detail; any questions regarding construction are addressed, the punch list is signed-off on, draws are approved, and pictures are taken by happy family members. It is not a time to rush and, as such, the costs associated with doing a proper final walk-through should be considered when capping fees. Our recommendation is to increase the cap on this line item to reflect the importance of the final walk through and the amount of time it takes to do in a proper manner.

STAFF RESPONSE: Due to the total number of inspections allowed throughout construction, staff believes this limitation is adequate and does not recommend a change to the proposed rule.

COMMENT (62): §53.85(b)(8). Commenter states the records required for financial management are much greater than a "journal of all transactions". Proper Financial Management will result in a timely request for payments, disbursements, and a clean Single Audit. We would recommend the paperwork required by the HOME Program for a single draw is voluminous. The costs associated with doing proper financial management (not just keeping a journal) should be considered when capping fees.

STAFF RESPONSE: Staff agrees in part with this request and has increased this cap to $150 per Contract.

COMMENT (62): §53.85(b)(10). Commenter states Administrators have heard repeatedly from the TDHCA Board that we need to be doing more education of the consumers/beneficiaries of the HOME Program. Education is expensive/it is time consuming, printed materials are expensive to produce and update on a regular basis, and the instruction given to each applicant must be tailored to their knowledge and experiences. All of this requires knowing your consumer, spending time with them, providing them with understandable materials, and a commitment to foster a learning environment; none of which is cheap. The recommendation is to increase the capon this line item. The costs associated with doing information services, and providing the education requested by the Board, should be considered when determining fees.

STAFF RESPONSE: Staff agrees in part with this request and has increased this cap to $100.

COMMENT (62): §53.85(b)(13). Commenter states the pre-construction conference is very important to a successful program. Placing such a low dollar value on this meeting sends the message that TDHCA believes it can be done quickly with little discussion. We recommend an increase to the cap on this line item to reflect the amount of time and preparation that a successful pre-construction conference requires.

STAFF RESPONSE: Staff believes this limitation of $200 is adequate and does not recommend a change to the proposed rule.

COMMENT (62): §53.85(b)(14). Commenter states that this is a lot of work for not much money: mail outs, paying for advertisements, verification of certifications, conducting the walk-through, vetting the builder, conducting a bid opening and tabulating bids, plus any/all Department required forms. In rural communities, identifying qualified contractors who are willing to do "government" work can be difficult at best. Often multi-county searches are required to obtain more than a single bid. The additional costs with these challenges should be considered when capping fees. Our recommendation is to increase the cap on this line item to better serve rural communities.

STAFF RESPONSE: Staff believes this limitation of $300 is adequate and does not recommend a change to the proposed rule.

COMMENT (62): §53.85(b)(16). Commenter states logic would dictate that the more inspections that are done during the construction process, the better quality product you will get. Things get covered up quickly on a construction site and if the Department is limiting the Administrator to only four (4) inspections, quality will suffer. Additionally, item (A) Foundation is two inspections. Pre-pour and post curing are either two inspections or a single inspection that takes at a minimum 8-12 hours to conduct (more probably would require spending the night at the site). Additionally, commenter cites previous TDHCA and HUD publications indicating the need for a great deal more inspections than the four (4) listed in Figure: 10 TAC §53.85(a)(4). Additional resources are included in the written public comment.

Commenter suggests the following milestone inspections should be performed by a rehabilitation/reconstruction inspector (in addition to unscheduled "drop-in": inspections):

1. Slab - pre-pour
2. Slab - post-pour
3. Framing
4. Roof Decking
5. Roof Felt
6. Shingle Installation
7. Plumbing - rough
8. Plumbing - top-off
9. Electrical - rough
10. Electrical - top off
11. Sheet rock hang
12. Sheet rock tape, float, and texture

13. Painting - interior

14. Exterior siding

The proposed amount of inspection limitations will only result in poor quality and higher maintenance costs for the homeowners that we are trying to assist. Having the homeowner and Contract Administrator sign each inspection is simply an exercise in bureaucracy and shows a lack of understanding about construction and how the Program is implemented in the field. Often homeowners move out of town during the construction phase, living with children in other towns or states. Inspections are routinely conduction in the evenings and over the weekend, contractors do not follow City Hall hours; waiting until normal business hours for an inspection will cause further delays in the process. Our recommendation is to allow for as many inspections as deemed necessary by the Administrator to ensure a high quality product and increase the amount allowed, recognizing the effects of inflation and much higher travel costs since the original cap was put into place. This cap has remained unchanged over the years.

STAFF RESPONSE: Staff agrees in part with the comment and has recommended adjusting the number of allowable inspections to 7, with a minimum of 3 required. However, staff recommends decreasing the line item cap since the inspections are limited to one particular construction activity and some inspections can be combined with others. Additionally, the Department encourages the Contract Administrator, who is now the responsible contractor, to perform these inspections and potentially incur cost savings since the housing units to be inspected are in closer proximity to the Contract Administrator. Furthermore, when considering the initial inspection, the final inspection and the punch list verification inspection, there are a total of 10 inspections allowed. The Contract Administrator is encouraged to drop-in to perform inspections at any time based on their own level of risk assessment. While there may be some delay in having the homeowner sign forms, it will be more than offset by insuring that the homes are being constructed and that the homeowner is aware of the process as it is ongoing.

Additionally, staff recommends an administrative change to allow only two progress inspections in the case of a MHU replacement since the housing unit is not being constructed on-site.

COMMENT (62): §53.85(b)(17). Commenter states that not all inspections will need sketches. On many inspections, photos should suffice.

STAFF RESPONSE: Staff agrees and recommends add to allow sketches "and/or" photographs adequate for verification.

COMMENT (62): §53.85(b)(18). Commenter states project documentation is voluminous and proposes that each home will have at least 2" of paper that is not related to construction or income eligibility. Commenter believes that listing only a few documents is misleading and appears to be an attempt to justify the $50.00 cap for Project Documentation. All of the paperwork contained in each project file is required by TDHCA (many items contain duplicate information or do not apply but must be completed and filed). With each change implemented by the Department, the number of documents grows exponentially. It is not unusual for the Department to come out with a new form and for monitors to require the Administrator to retroactively use this form (often meaning that the same information must be captured twice so that it can be transferred from the old to the new form). We have even seen this requirement when no more than the date on the bottom of the form, or formatting changed. The $50.00 cap will not cover the cost of copying the documentation, much less the cost of document preparation. We recommend increasing the cap on this line item to adequately cover the reality of the work involved in preparing and filing the documentation.

STAFF RESPONSE: Staff agrees in part with this comment and recommends increasing the item to $100.

COMMENT (62): §53.85(b)(20). Commenter states the punch list verification inspections may have to be performed multiple times. If the Department will not allow for multiple inspections it will be difficult to show the work has been completed. If not, the Department will have to assume responsibility for unsatisfactory work. Our recommendation is to allow the Administrators to conduct as many follow-up inspections as necessary to ensure that all punch list work has been completed properly and increase the line item amount for the initial punch list inspection, to more adequately reflect the amount of time that it takes to compile a complete/detailed punch list.

STAFF RESPONSE: Staff does not recommend a change to the proposed rule. If more than one punch list verification inspection is required, the Contract Administrator should hold the Contractor liable for the cost incurred with multiple inspections as routinely occurs in the industry.

COMMENT (62): §53.85(b)(21). Administrators are required to maintain and adapt to ever-changing Department requirements (order of documents, new forms, tab each item, individual staff requirements, etc.). The amount of paper required for each project is massive. In the past, with the continual changes made by the Department's compliance division, Administrators have been required to re-order and update files months after projects have been completed. Additionally, certain monitors have their own unwritten requirements; different order for the environmental documents, each item on their checklist must have a numbered tab in the file so they do not have to look through the whole file (of course, if a checklist changes, the files for this monitor must be re-tabbed), etc. All of these evolving requirements are costly and labor-intensive. The $75.00 cap for Recordkeeping does not even cover the cost of copying program and environmental files. Our recommendation is to increase the cap on this line item.

STAFF RESPONSE: Staff agrees in part with this comment and recommends increasing the item to $400 per Contract.

COMMENT (62): §53.85(b)(23). Commenter asks if you can imagine ordering an MHU without any specifications? Specifications should be required for Manufactured Housing Units (MHU) and, therefore, an allowable cost.

STAFF RESPONSE: Staff agrees in part with commenter regarding the necessity of specifications for a MHU. However, staff suggests that only condensed specifications are needed and should be included as part of the bid package for the contractor. Allowing the market value cost associated with a complete specification manual, as in the case of a site-built housing unit, appears to exceed cost reasonableness.

COMMENT (62): Commenter states that reducing the amount of soft cost available for reconstruct, while increasing the difficulty of the program is a non sequitur. The soft costs percentage should be increased to 14%. As an alternative to increasing the soft cost, the administrative costs should be increased from 4% to 6%. This would put the Texas HOME Program more in line with other state programs.

In 2001 TDHCA reduced soft costs from 12% of the total contract amount to 12% of construction costs (this change resulted in approximately a 10% reduction in the allowable dollar amount of soft costs paid). Since that time, the HOME Program has become much more difficult to implement, the amount of paperwork associated with the Program and has increased geometrically, and the costs of doing business (materials and labor) have risen. Despite all of this, the Department is recommending reducing soft costs to a level that will make the program unfeasible, and maybe impossible, to successfully implement. Our recommendation is the following for Current Soft Cost Fees:

Where OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) and Max Assistance is $60,000, the Max Percentage for Soft costs based on 12% Hard Costs or Project Costs have been $6,429

Where OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) and Max Assistance is $67,500 the Max Percentage for Soft costs based on 12% Hard Costs or Project Costs have been $7,232

Where OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) is $75,000 the Max Percentage for Soft costs based on 12% Hard Costs or Project Costs have been $8,036

Where OCC or OCC or HBA - Rehabilitation only and Max Assistance is $30,000 the Max Percentage for Soft costs based on 12% Hard Costs or Project Costs have been $3,214

Where OCC- Reconstruct (replacement) with MHU and Max Assistance is $60,000 the Max Percentage for Soft costs based on 12% Hard Costs or Project Costs have been $6,429

The information contained in the table TDHCA Proposed Soft Cost Fees provides additional information for analysis:

Where the activity is OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) and the proposed Maximum Assistance is $60,000, Column B shows TDHCA Proposed Soft Cost Percent Limits at 10%, Column C shows TDHCA Proposed Maximum Soft Cost Fees at $5,455, Column D shows Changes in Soft Cost Fees (Column C Less Current Fees (indicated above)) at (-$974), Column E shows Estimated Minimum Added Soft Cost for Deferred Forgivable Loans at $2,500, Column F TDHCA Proposed Soft Costs Available for Management Services, (Column C Less Column E) at $2,955;

Where the activity is OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) and the proposed Maximum Assistance is $67,500, Column B shows TDHCA Proposed Soft Cost Percent Limits at 9%, Column C shows TDHCA Proposed Maximum Soft Cost Fees at $5,573, Column D shows Changes in Soft Cost Fees (Column C Less Current Fees (indicated above)) at (-$1,659), Column E shows Estimated Minimum Added Soft Cost for Deferred Forgivable Loans at $2,500, Column F TDHCA Proposed Soft Costs Available for Management Services, (Column C Less Column E) at $3,073;

Where the activity is OCC - Reconstruction (includes MHU to site-built and contract for deed conversions) and the proposed Maximum Assistance is $75,000, Column B shows TDHCA Proposed Soft Cost Percent Limits at 8%, Column C shows TDHCA Proposed Maximum Soft Cost Fees at $5,556, Column D shows Changes in Soft Cost Fees (Column C Less Current Fees (indicated above)) at (-$2,480), Column E shows Estimated Minimum Added Soft Cost for Deferred Forgivable Loans at $2,500, Column F TDHCA Proposed Soft Costs Available for Management Services, (Column C Less Column E) at $3,056;

Where the activity is OCC or HBA - Rehabilitation only and the proposed Maximum Assistance is $30,000, Column B shows TDHCA Proposed Soft Cost Percent Limits at 18%, Column C shows TDHCA Proposed Maximum Soft Cost Fees at $4,576, Column D shows Changes in Soft Cost Fees (Column C Less Current Fees (indicated above)) at $1,362, Column E shows Estimated Minimum Added Soft Cost for Deferred Forgivable Loans at $2,500, Column F TDHCA Proposed Soft Costs Available for Management Services, (Column C Less Column E) at $2,076;

Where the activity is OCC - Reconstruct (replacement) with MHU and the proposed Maximum Assistance is $60,000, Column B shows TDHCA Proposed Soft Cost Percent Limits at 5%, Column C shows TDHCA Proposed Maximum Soft Cost Fees at $2,857, Column D shows Changes in Soft Cost Fees (Column C Less Current Fees (indicated above)) at (-$3,572), Column E shows Estimated Minimum Added Soft Cost for Deferred Forgivable Loans at $2,500, Column F TDHCA Proposed Soft Costs Available for Management Services, (Column C Less Column E) at $357;

Column D shows that the proposed rules would reduce soft cost fees for the various activities with the exception of OCC Rehabilitation only. The problem with "OCC Rehabilitation only" is the complete lack of understanding that it is practically impossible to find owner occupied households living in housing that can be rehabilitated to meet minimum standards for $30,000 of hard and soft costs. The ongoing costs of operation and maintenance of their homes are beyond their means. This is especially true for the very-low income households that Rider 5 targets.

Column E shows the estimated cost for additional services as clearly stated in the HOME Advisory Task Force Report. It appears these costs have been completely ignored as having any impact on the ability of surveys, appraisals title commitments, homeowner insurance, flood insurance (If needed and not included in the $2,500 figure), title insurance, and the efforts to coordinate all these activities.

Column F shows the amount of soft cost funds available to Contract Administrators to manage, coordinate and implement the OCC program. When compared to Column A in the "Current Soft Cost Fees" table, there is a significant negative impact on the amount of soft costs funds available to implement this Program. This is neither reasonable nor feasible considering all the additional requirements for implementing the forgivable loan form of assistance. The Recommended Soft Cost Fees table contains the following information:

The higher percentages for soft costs are necessary for each of these activities since the amount of paperwork remains the same to meet the newly imposed requirements for the deferred forgivable loan program. These fees would provide some hope that the OCC Program could continue to be implemented.

STAFF RESPONSE: Staff has reviewed and analyzed all of the public comment received as it relates to soft costs limitations and recommends changes to the proposed rule.

BOARD COMMENT: §53.80(e)(1). The following language was added to this section per Board member discussion during the Action Item to adopt the proposed rule at the December 20, 2007 Board meeting: The Department will accept an as-built appraisal as the final appraisal if no change orders or modifications occur. If change orders or modifications occur, the Administrator must

submit a certification from an appraiser that addresses a potential increase or decrease to the final value of the property.

BOARD COMMENT: Figure: 10 TAC §53.85(a)(4). The allowable soft costs for Progress inspections (up to 7) was increased to $200 max each, with a minimum of 4 required as per Board member discussion during the Action Item to adopt the proposed rule at the December 20, 2007 Board meeting.

BOARD COMMENT: §53.85(b)(16). The following language was added to this section as per Board member discussion during the Action Item to adopt the proposed rule at the December 20, 2007 Board meeting: Progress inspections is the cost incurred in performing inspections at logical points during the construction process or prior to approving each draw that verify quality and completeness of work to date and are signed by the inspector and Contract Administrator. Upon completion of the progress inspection, the Contract Administrator must send a copy of the completed inspection report to the homeowner. The homeowner must also sign to acknowledge receipt of the completed Progress Inspection Report.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on December 20, 2007. The new rule ensures compliance with statutory requirements as per changes in Chapter 2306, Texas Government Code during the 80th legislative session. In order to offer consistency and uniformity among housing programs, changes were made to the rule in the areas of definition. To provide clarity regarding administrative processes, additional sections were added to assist in formalizing those program processes. Finally, to streamline and update certain processes, some sections were removed or collapsed with other relevant sections.

The new chapter is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.81. General Contract Administration.

All Administrators and Development Owners must use the forms provided on the Department's website and comply with the Department's procedural and documentation requirements as outlined in the HOME Program Manual and in this section including, but not limited to:

(1) Contract must be signed and executed by all appropriate authorized parties;

(2) Attend training as required by the Department;

(3) Develop and comply with written procurement selection criteria and committees;

(4) Procure consultants, if applicable. Consultants may not participate in or direct any part of the process for procuring consultants;

(5) Complete all applicable Department Contract System access request forms and requirements;

(6) Perform environmental clearance procedures before committing or expending funds to a Project or Activity, performing any construction activities, including demolition, or the occurrence of the Loan closing, if applicable;

(7) Develop and comply with written accounting, reporting, filing, and documentation procedures;

(8) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility which must include, but is not limited to:

(A) Homeownership, if applicable;

(B) Income eligibility;

(C) Assisted Households must be located within the Administrator's Service Area, as defined by the Contract;

(D) Property taxes are current, if applicable; and

(E) Assist Special Needs Households, if applicable.

(9) Develop and comply with affirmative marketing procedures in accordance with the Final Rule;

(10) Complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application;

(11) Ensure that no Conflict of Interest exists between Households to be assisted and Persons designated to receive or assist with the application intake process;

(12) Document and verify all income and asset eligibility requirements for the Household to be assisted;

(13) Ensure compliance with applicable audit certification requirements;

(14) Ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit;

(15) Ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with 16 TAC, Subtitle C, §16.001;

(16) Ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with 16 TAC, Subtitle C, §426.003;

(17) Provide building construction contractor oversight and ensure builder's risk coverage is provided;

(18) Ensure that the demolition of any housing unit does not occur less than 6 (six) months prior to the Contract end date;

(19) Ensure compliance with applicable construction or property standards and lead-based paint requirements;

(20) Conduct appropriate property inspections and documentation in accordance with applicable program requirements;

(21) Submit required documentation and electronic requests for Project setups and disbursement requests to the Department;

(22) Submit support documentation for Project setups and disbursement requests within thirty (30) days of electronic submission to the Department;

(23) Submit all Project setups and support documentation for Households to be assisted no later than ninety (90) days prior to the Contract end date. In the event that a loan closing is required for single family Rehabilitation or Reconstruction, non-development activities,

all Project setups and support documentation must be submitted no later than one hundred eighty (180) days prior to the Contract end date;

(24) Submit required Match documentation to the Department;

(25) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

(26) Submit any Program Income received to the Department within ten (10) days of receipt;

(27) Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of Administrator or Development Owner, Activity address and Activity number referenced on the check;

(28) Submit required documentation for Project completion reports and certificate of Contract Completion no later than sixty (60) days from the Contract end date; and

(29) Complete the terms of the Contract.

§53.85. Soft Cost Limitations.

(a) The Department has established cost guidelines and limitations for soft costs related to the OCC and HBA Program Activities.

(1) With the exception of Administrative Costs per Contract, these costs are maximums per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation and cost categories and limitations not identified in the proposed rule.

(2) Contract Administrators must certify that the amount being disbursed is for the actual amount of costs.

(3) Costs that may be categorized as either a project cost or an administrative cost are identified below. No duplicate disbursement of costs is allowed. Costs may only be disbursed as either a project cost or administrative cost but not both. Additionally, costs may only be disbursed once per occurrence when providing both acquisition and construction type of assistance to the same Project or Activity as may take place with, but not limited to, contract for deed conversions.

(4) Unless otherwise noted, all items are limited to one (1) occurrence per Project or Activity.

(5) Third-party project costs related to loan closing requirements, such as appraisals, title insurance, tax certificates, and recording fees, are not subject to a maximum per Activity or Project. However, these costs are subject to the limitations of the maximum percentage of hard or project costs identified in subsection (c) of this section.
Figure: 10 TAC §53.85(a)(5)

(b) The allowable activities for each cost category are defined as follows:

(1) Affirmative marketing plan is the cost incurred to develop a written plan for ensuring that marketing, advertising, and outreach activities are provided to all protected classes and to the populations being served by the Contract. This includes the development of advertising materials and hand-outs and public presentation;

(2) Application intake and processing is the cost incurred for the completion of all intake application documentation and forms, verification of all sources of income, employment verification, asset verification and imputation and re-verification of all expired documentation. This includes all Department-required forms, worksheets, addendums and certifications required for the household's application intake and processing;

(3) Appraisal is the cost incurred in obtaining appraisals prepared by an independent, state-licensed real estate appraiser;

(4) Construction and disbursement documentation preparation is the cost incurred in the preparation of forms required by the Department that are related to construction or disbursement documentation and include electronic entry into the TDHCA Contract System, support documentation preparation and completion of Department-required forms including, but not limited to, the Contractor Request for Payment, Lien Waiver Affidavits, Final Bills Paid Affidavit and Certification of Completion;

(5) Environmental review is the cost incurred for the preparation and completion of all required forms, checklists and certifications, publication activities and Request for Release of Funds and Finding of No Significant Impact and Eight Step Process, if applicable;

(6) Exempt administrative environmental is the cost incurred in the completion of an exemption form for administrative expenses;

(7) Final inspection is the cost incurred in performing a final walk through and physical inspection of the assisted housing unit noting any deficient items that must be corrected before final payment and the completion of any Department-required forms or checklists.

(8) Financial management is the cost incurred in the management of all project and program accounts using a fund type accounting system that can trace each expense to an individual Project or to the program as a whole and ensures compliance with OMB circulars. A written or printed journal of all transactions including receipt and disbursement of funds should be included;

(9) Homebuyer counseling is the cost incurred to provide a minimum of eight hours of counseling provided by a certified homebuyer counselor. Instruction may include, but is not limited to, financial management, credit management, homebuyer education, and/or job training;

(10) Information services is the cost incurred to provide information to homeowners, prospective homebuyer and/or tenants. These may include the following:

(A) Fair housing--cost incurred to provide information to prospective homebuyers and tenants (not applicable to OCC);

(B) Loan procedures--cost incurred to provide information pertaining to fair lending practices, loan requirements, and closing procedures to participants in OCC and HBA (not applicable to TBRA);

(C) Warranty (Project cost only)--cost incurred to provide an explanation of the builder's homeowner warranty (must comply with Texas Residential Construction Commission requirements) to households assisted with Reconstruction or Rehabilitation activities;

(D) Lead-based paint--cost incurred to provide lead-based paint hazard notification to all applicants in all HOME Program Activities;

(11) Initial inspection is the cost incurred in the completion of the initial physical inspection of the housing unit to be assisted and Department-required forms and checklists. The inspection must identify all health and safety concerns regarding the housing unit, all sub-standard conditions that require repair or replacement to comply with applicable codes and standards and the TMCS, and provide enough detail to complete a work write-up, and if applicable, a justification of Reconstruction;

(12) Plans are the cost incurred to obtain a complete set of plans shall include a site plan for each housing unit showing known easements and lot set-backs, a floor plan, a front elevation, a founda-

tion plan, a plumbing and electrical plan and a mechanical and energy efficiency plan. If these plans are purchased from or donated by a licensed architect or engineer they should bear the appropriate stamp. While builders may require less complete plan sets and it is understood that some of these details may be combined on the same sheet, any plans set that does not include this level of detail will be pro-rated accordingly;

(13) Pre-construction conference is the cost incurred in conducting a meeting with the homeowner and building construction contractor to explain and discuss the construction process being undertaken. This meeting should include a description of construction activities and procedures, expectations of the final product, an explanation of the roles and duties for all parties, detail and review of the timelines and contractual milestones, required access and use of utilities, provision of appropriate security measures, selection of products and improvements to be provided, and a discussion of appropriate handicap accessibility features;

(14) Procurement of contractor is the cost incurred in the preparation of bid documents, pre-bid advertising, conducting of the pre-bid conference, the verification of required builder certifications, conducting of the walk-through of housing units to be assisted, conducting checks of bidder qualifications and references, conducting bid opening including keeping minutes and tabulations, the review of the bids, conducting contract negotiation and verification, the notification of award and the completion of any Department-required forms;

(15) Procurement of professional service provider is the cost incurred to procure a professional service provider (i.e. consultant). The Administrator must use negotiated bidding procedures for the procurement of professional service providers (i.e. consultants) and provide for independent procurement of professional service providers (i.e. consultants may not participate in any aspect of procuring consultants);

(16) Progress inspections is the cost incurred in performing inspections at logical points during the construction process or prior to approving each draw that verify quality and completeness of work to date and are signed by the inspector and Contract Administrator. Upon completion of the progress inspection, the Contract Administrator must send a copy of the completed inspection report to the homeowner. The homeowner must also sign to acknowledge receipt of the completed Progress Inspection Report. Logical points of inspection include but are not limited to:

(A) Foundation--prior to pouring a monolithic foundation and after initial curing or alternatively after completion of piers,

(B) Framing--completion of framing,

(C) Rough-in--after completion of electrical and plumbing but before covering and placement of fixtures, and

(D) Substantial completion;

(17) Progress inspections should each require at least one hour and include inspection forms, filed notes, sketches, and/or photographs adequate for verification of that stage of completion;

(18) Project documentation preparation is the cost incurred in the preparation of forms required by the Department that are not related to income eligibility or construction and include, but are not limited to, the TDHCA Contract System Access Request, Direct Deposit Authorization, Texas Application for Payee Identification, and Audit Certification;

(19) Property inspections is the cost incurred to perform an inspection of the subject property in order to certify that no substandard conditions exist according to TMCS using the Department's forms;

(20) Punch list verification inspection is the cost incurred in performing a final physical inspection of the assisted housing unit to verify the completion of punch list items only;

(21) Recordkeeping is the cost incurred to develop, prepare and maintain a recordkeeping system in the order prescribed by the Departments which includes three separate types of filing for program, environmental, and project areas;

(22) Schedule of values is the cost incurred to prepare a line-item description of each work activity and its associated cost and enter electronically into the Department's Contract System as the budget;

(23) Specification manual is the cost incurred to prepare or obtain a single generic manual to be used for multiple sites or projects detailing the methods and materials to be used on all construction jobs. The homeowner's choices may be included but should be detailed for each job. All trade areas and construction activities must be included in the specification manual. In cases where there are no local requirements for specifications and TMCS are used, no additional cost should be requested for disbursement;

(24) Work write-up is the cost incurred to prepare or obtain a complete description of the work activity specific to Rehabilitation required to bring the entire structure into compliance with the applicable construction standards. It must include all units of measurement, materials to be used, methods of application, and all necessary construction detail and/or may be used in conjunction with a specification manual; and

(25) Work write-up/cost estimate is the cost incurred in performing the Feasibility Analysis which is a budgetary justification for Reconstruction which compares the cost of Rehabilitation to the replacement costs of a housing unit and in the completion of Department-required forms. The analysis must include a summary of the steps and costs required to correct the deficiencies identified in the initial inspection.

(c) Notwithstanding the limitations of subsection (a) of this section, the total of all soft costs for each Project or Activity is limited based on the maximum amount of assistance allowed for the housing unit and is calculated as a percentage of the hard or project costs for each Activity or Project. For example, a household that is eligible to be assisted with an OCC Reconstruction amount of assistance of $67,500, the maximum amount of total soft costs is derived by dividing $67,500 by 1.09 and then subtracting this amount from $67,500, which equals $5,573.39. There is no minimum percentage for soft costs per housing unit. These percentages are the maximums allowed per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation.

Figure: 10 TAC §53.85(c)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION
SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.19

The Texas Residential Construction Commission adopts amendments to Title 10, Part 7, Chapter 303, Subchapter A, §303.19, relating to renewal of registration for builders and remodelers in the state of Texas as provided for in Title 16, Property Code, with changes to the text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7816). The amendments implement recent legislative amendments to the agency's statute and agency policy concerning registration requirements and continuing education. In addition the adoption of these amendments is a part of the agency's rule review as required by Government Code §2001.039.

Three people submitted comments and suggested changes to the proposed amendments to 10 TAC §303.19. Ned Muñoz on behalf of the Texas Association of Builders ("TAB") suggested the commission substitute "the last day in February" for "February 28" in proposed §303.19(l). The commission declines the suggestion because February 28th is always the last day in February in odd-numbered years. In addition, TAB noted that a cross-reference to a proposed new rule was incorrect. Accordingly, the commission adopts §303.19(m), with changes, to correctly cross reference to §303.20.

In response to Mr. Kevin Kenny's concerns that five hours of continuing education is not sufficient, the commission declines to modify the rule because the number of hours of continuing education stated is in compliance with statutory requirements under Property Code §416.011 and §416.012.

In response to Mr. Toney Dougherty's suggestions that all builders be required to take at least sixteen hours continuing education per year, that experience be a consideration of registration requirements, that an ICC test in residential construction be required, and that small builders be allowed to register for $100.00 each year but increase home registration fees, the commission declines to modify the rule because it is in compliance with statutory requirements under Property Code §416.011 and §416.012, and with the mandatory fees set by the General Appropriations Act.

The commission has made other non-substantive changes to the rule to improve readability and clarity and to promote consistency with other rules.

The amendments are adopted under Property Code §408.001, which provides generally the authority for the commission to adopt rules necessary for the implementation of Title 16; §416.002, which provides the commission authority over registration and renewal; §416.012, which sets forth continuing education requirements; and Government Code §201.39, which requires the periodic review of rules to determine whether they continue to be necessary.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code §§408.001, 416.002, and 416.012 and Government Code §2001.039.

No other statutes, articles, or codes are affected by the adoption.

§303.19. Renewal of Registration for Builders and Remodelers.

(a) A person operating as a builder or remodeler in this state must keep a current certificate of registration and must timely renew its certificate of registration in order to remain in good standing with the commission.

(b) The primary designated agent shall apply timely for renewal of the certificate of registration.

(c) A builder or remodeler that fails to maintain a current certificate of registration may be subject to a late fee, an administrative penalty, or other disciplinary action, as determined by the commission.

(d) In order to renew a certificate of registration, a builder or remodeler shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than fifteen (15) days prior to the end of the applicable registration period as provided in this section.

(e) A builder or remodeler must respond completely and truthfully regarding criminal history and public financial information, and the ownership of all business entities registered with the commission. Failure to respond completely and truthfully is a violation of Government Code §2005.052 and §305.10 of this title, and will be considered evidence that the applicant is not honest and trustworthy and does not have integrity, and may result in denial of the renewal.

(f) All builders and remodelers that file renewal applications with the commission and that have registered more than twenty-five homes in the prior calendar year must file their renewal applications via the commission's secure Web portal provided for online builder/remodeler renewal registration. A completed renewal application and renewal fee must be submitted for each named individual or business entity under which the applicant intends to operate as a builder or remodeler in this state.

(g) Builders and remodelers that are required to use the online renewal process under subsection (f) of this section, but that are unable to utilize the online system may submit a sworn affidavit to the Executive Director requesting a waiver from the required use of the online process for renewal registration.

(h) The Executive Director may grant a waiver requested under subsection (g) of this section, if the builder or remodeler submits a sworn affidavit stating that the builder or remodeler:

(1) does not have the use of a credit card or access to online banking for the purpose of making an online payment;

(2) does not have access to the internet; or

(3) other good cause for waiver as determined in the sole discretion of the Executive Director.

(i) A decision by the Executive Director on whether to grant a waiver under subsection (h) of this section is a final agency decision not subject to further administrative appeal.

(j) A builder or remodeler that failed to timely renew during a previous renewal period and that alleges that it has not acted as a builder or a remodeler in this state during the period in which it did not have

an active certificate of registration as required by law, must apply for renewal of its certificate of registration under its existing builder registration number accompanied by a notarized affidavit that the company has not acted as a builder or remodeler since the registration expired.

(k) A builder or remodeler that registered with the commission prior to September 1, 2007, and that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year to remain in good standing. A builder or remodeler that renews its registration pursuant to this subsection will renew thereafter every two years on the date indicated in the letter accompanying the renewal certificate.

(l) A builder or remodeler that registered with the commission prior to September 1, 2007, and that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year to remain in good standing. A builder or remodeler that renews its registration pursuant to this subsection will renew thereafter every two years on the date indicated in the letter accompanying the renewal certificate.

(m) A builder or remodeler that registers with the commission for the first time after September 1, 2007:

(1) will be required to renew its registration one year from the date of approval of the initial registration as shown on the commission's letter accompanying the original certificate of registration; and

(2) must show proof of having obtained five hours of approved continuing education credits timely as required by §303.20 of this chapter or the renewal application will be denied.

(n) A builder or remodeler that renews its registration with the commission in accordance with subsection (m) of this section thereafter will renew its certificate of registration every two years from the date that renewal is approved as shown on the commission's letter accompanying the renewal card.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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Proposal publication date: November 2, 2007
For further information, please call: (512) 463-2886

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SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

10 TAC §303.300

The Texas Residential Construction Commission adopts amendments to Title 10, Part 7, Chapter 303, Subchapter D, §303.300, relating to the Texas Star Builder Program as provided for in Title 16, Property Code, with changes to the proposed text as published for comment in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7818). The amendments incorporate into the rules recent legislative amendments to the agency's statute and changes in agency policy. In addition, the amendments are part of a commission review of the necessity of these rules under the requirements of Government Code §2001.039, which requires each state agency to periodically review its rules.

The commission received one set of comments on the proposed amendments to this §303.300 from Ned Muñoz on behalf of the Texas Association of Builders ("TAB").

With regard to 10 TAC §303.300(b)(11), TAB suggested that the definition of green building encompass a greater array of green building techniques available to builders and consumers than the definition proposed. TAB also noted a misspelling of the word "renewable." TAB's suggested definition for green building is "Green building--incorporating energy efficiency, water and resource conservation, sustainable or recycled building products, and indoor air quality into the everyday process of home building." To the extent that the definition suggested by TAB may include more projects, the commission agrees to adopt the suggested definition.

TAB also noted an inconsistency between subsection (c)(2) and subsection (c)(3) such that neither subsection provides for a builder or remodeler that has registered exactly 40 homes in the preceding 12 months. Therefore, the commission retains the language in (c)(2) to make its provisions applicable to a builder that registered 40 homes or less in the preceding 12 months. For consistency's sake, the commission has revised other sections of the rule that refer to a bracket involving 40 homes so that 40 is consistently grouped 40 with "less than 40."

TAB expressed concern that revisions to subsection (f)(1)(A) severely limit the green building programs in which a builder may participate as part of its membership in the Texas Star Builder Program and recommends the adoption of language to include other state and local green building programs. However, the revised subsection uses the reference to the National Association of Builder's green program as an example of a type of green building program that is eligible, indicated by the phrase "such as". Additionally, new subsection (f)(1)(J) provides that an applicant may submit any local or nationally recognized program that requires a greater standard of construction practice than required by the commission pursuant to the commission adopted limited warranty and building and performance standards or usual and customary construction practices or that provides an increased level of service for residential construction consumers, as approved by the Executive Director. The new catch-all provision provides that the Executive Director can approve other programs of the same ilk that are not specifically otherwise listed in the subsection. Therefore, the commission declines to adopt the suggested changes because they are not necessary to allow alternative green building programs to be eligible under the construction practices subsection of this rule.

With regard to the language in subsection (j)(1) that prohibits a member from submitting for credit a continuing education course with the same course content as one that has been previously submitted for credit by the same member, TAB expresses concern that is unduly limiting because for example a building code may under go changes and a subsequent course on building codes is still valuable. In TAB's example, the course content is not the same; rather, the course content of the second course is on the revised building code. Furthermore, the language in subsection (j)(1) that TAB questions is rule language that was previously adopted to prohibit a member from submitting the same course for credit more than once in a year, for example, attending a live presentation of a course in one city, and submitting the same course for credit after watching the video. When the com-

mission adopted the current language similar comments were discussed and efforts were made at that time to make clear that the commission intends to prohibit a builder from submitting the same course twice for credit. Accordingly, the commission declines to make the changes suggested by TAB, but has changed the word "same" to "identical" in an effort to further clarify its intent.

TAB expressed concern that the intent of the deletion of the language in (j)(1)(e)(ii) may signal an intent to disallow the approval of in-house training courses. The amended rule provides information on how any course sponsor can provide training. Therefore, the commission deleted the language because in-house training courses are no different from any other sponsored course in (j)(5)(B).

TAB provided comments on sections (m)(1) and (o)(1) because of amendments to the rule that provide for a member's response within a period of time from the date of the notice. TAB is correct that the intent is to change the timing of the response from the date of receipt to the date of the notice. The reason for this is that notice is mailed by certified mail and first class mail. Frequently, the first class mail is not returned but the recipient chooses not to pick up certified mail. Mail is assumed to be received within three days of mailing. However, if the commission has no proof of receipt and no response, the denial does not reach finality unless the commission takes the matter to the State Office of Administrative Hearing. The commission would like to achieve finality without going to hearing when the respondent chooses to ignore commission mail. Nonetheless, the intent of the rule is not to catch a member unaware but to streamline the commission's efforts and conserve commission resources. So to provide plenty of time for a respondent to receive the commission's notice, the commission has revised subsection (m)(3) to provide that a denial of an application is final within thirty days of the date of the mailing of the notice, unless an appeal has been received unless the applicant can show that the notice of request was not actually received within thirty days of the date of the notice. Additionally, the commission has revised the date for finalization of a revocation in subsection (o)(1) to provide that a revocation is final twenty days after the date of mailing of the notice unless the member can show that the notice of request was not actually received within fifteen days of the date of the notice.

TAB also commented on the language in paragraphs (G) and (H) of subsection (1)(n), asserting that the legislature does not intend for the commission to discipline builders for first time violations of failure to respond to a complaint and failure to participate in a state-inspection process. The commission agrees that with regard to revocation of a builder's registration, certain provisions of House Bill 1038 provide that for violations of the Act involving transactions between a homeowner and builder, the commission may not revoke a builder's registration unless there have been more than one instance of such violation. The Act does not explicitly require that a builder follow through on an offer made to repair. However, participation in the Texas Star Builder Program is voluntary and the purpose of the program is to provide an avenue for builders who demonstrate a commitment to their profession and to providing superior customer service to distinguish themselves from their colleagues. Moreover, subsection (g) of this section requires an applicant to agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder or remodeler and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation. Therefore, it is not unreasonable to ask that a member of this program of elite builders, who has already agreed to participate in the SIRP process, to respond to commission inquiries and participate in the state-inspection process or face removal from the program. Accordingly, the commission declines to adopt TAB's suggestion and does not find that the expectations stated in these two paragraphs are inconsistent with the legislative intent embodied in the two separate statutory requirements that the commission create a Texas Star Builder Program and that the commission not revoke a builder's registration for a single infraction of certain itemized violations of the statute.

The commission made other non-substantive changes to the proposed text to improve clarity and readability.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Property Code §416.11, which requires the commission to establish rules and procedures for a Texas Star Builder Program; and Government Code §2001.039, which requires state agencies to periodically review their rules.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code §408.001 and §416.11; and Government Code §2001.039.

No other statutes, articles, or codes are affected by the adoption.

§303.300. Texas Star Builder Program.

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that are registered and in good standing under Subchapter A of this chapter for a period twelve months immediately preceding their application to the program and have registered at least three residential construction projects with the commission. Participation in this program is not required to be a builder or remodeler in the state of Texas.

(b) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) Aging-in-place--universal design techniques allowing a person to live comfortably, safely and independently while enjoying daily rituals regardless of age.

(2) Applicant--the person identified on the Certificate of Registration issued by the commission pursuant to Subchapter A of this chapter that applies for membership in the Texas Star Builder Program under this section.

(3) Complaint--a written notice by a person or persons to the commission stating a disagreement with or concern about a builder's performance, construction practices or business practices.

(4) Continuing education--commission-approved education courses or professional development activities such as workshops, seminars, institutes, conferences or short-term courses.

(5) Continuous membership--a period of membership in good standing without voluntary or involuntary interruption or lapse.

(6) Customer service handbook--a written program given to each residential construction customer that demonstrates the member's commitment to customer service. Program elements must include all of the following:

(A) documentation of the construction schedule from start to finish;

(B) a description of the sub-contract construction sequencing and appropriate times for customer consultation or decisions;

(C) an agreement to provide written weekly updates on construction progress;

(D) procedures to remedy any variations;

(E) a written commitment to provide daily member or construction manager site visits;

(F) construction site clean-up policies;

(G) construction site security and safety procedures; and

(H) information about the commission, its complaint procedures and its process for requesting a state sponsored inspection for alleged post construction defects.

(7) EasyLiving Home™--a voluntary certification program that specifies criteria in everyday construction to add convenience in your new home and to welcome all friends, family and visitors regardless of age, size or physical ability.

(8) Employee involved in on-site construction activities--an employee of the member who is responsible for residential construction activities at the residential construction job site and whose job duties include but are not limited to:

(A) acting as a project manager, superintendent or foreman;

(B) supervising construction crews or subcontractors;

(C) scheduling construction crews or subcontractors;

(D) inspecting construction work; or

(E) inventorying and inspecting the delivery of construction materials to the site.

(9) Energy Star--the US Environmental Protection Agency promulgated guidelines for products and designs that promote energy efficiency that conserves natural resources while providing a comfortable and healthy home environment.

(10) Foundation practices--

(A) Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record;

(B) The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer;

(C) Foundations are built as designed;

(D) The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report;

(E) If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification;

(F) The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home;

(G) The builder provides to the homeowner a final survey showing that the site drainage is in accordance with the International Residential Code; and

(H) The builder who constructs the major structural components of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:

(i) the plans, specifications, and recommendations provided by the engineer and the geotechnical report if required;

(ii) the inspection report;

(iii) the stressing certification; and

(iv) the record of the original elevations.

(11) Green building--incorporating energy efficiency, water and resource conservation, sustainable or recycled building products, and indoor air quality into the everyday process of home building.

(12) Member--a person registered by the commission as a builder or remodeler or designated agent of a builder or remodeler who has been approved by the commission for admission into the Texas Star Builder Program.

(13) Program year--July 1 to June 30 of each calendar year.

(14) Responsible party--an individual who is authorized to act on behalf of a business entity applying for membership in transactions encumbering amounts in excess of $100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

(15) SIRP--the state-sponsored inspection and dispute resolution process.

(16) Universal Design Options--features in residential construction that provide barrier-free access and easy mobility and independence for people with a broad variety of physical needs including all of the following: barrier-free construction of exterior doors, interior doorways and hallways; reinforced bathroom walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

(c) Eligibility.

(1) An applicant who is a sole proprietor must satisfy one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas;

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application;

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(2) An applicant that is a business entity, which registered 40 homes or less in the preceding twelve months, must have at least one responsible party of the applicant who satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas;

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application;

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(3) An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one responsible party of the applicant and one employee of the applicant who is involved in on-site construction activities who each satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas;

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application;

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and holds a four-year degree in construction science or its equivalent from an accredited college university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution that includes a statement of the following information that at the time of the application:

(A) Applicant has an excellent relationship with the financial institution (or highest standard of relationship, as defined by the financial institution);

(B) Applicant is eligible for an extension of credit for the purpose of residential construction;

(C) Applicant is not in default of any credit obligations to the financial institution; and

(D) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant, any affiliate of the applicant, or any corporate officer, general partner or constituent partner as identified by the applicant to the financial institution, has filed for federal bankruptcy in this state or any state in the seven years immediately preceding the date of the application.

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending/banking industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic's and materialman's liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(2) provide a notarized affidavit in which the applicant attests that:

(A) the applicant, any affiliate or corporate officer, general partner or constituent partner of the applicant has not filed for federal bankruptcy in this state or any other state in the seven years immediately preceding the date of the application;

(B) the applicant is current on all state property taxes unless a protest or legal challenge has been properly filed;

(C) the applicant has no unpaid judgments;

(D) the applicant has no enforceable mechanic's and materialman's liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(3) The requirements of a statement prepared by a financial institution in accordance with paragraph (1) of this subsection do not require the financial institution to conduct any independent investiga-

tion beyond the institution's own records and the actual knowledge of the officer or official who executes the document.

(4) If an applicant is unable to obtain the required statement in accordance with paragraph (1) of this subsection, an applicant can submit instead a statement signed by an officer of its financial institution on a commission-prescribed form that the institution does not choose to provide the requested information or submit an affidavit by the applicant attesting to the fact that the financial institution was asked to provide the information and refused.

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) $300,000 per occurrence, if the applicant registered between 25 - 75 homes in the preceding twelve months; or

(B) $500,000 per occurrence, if the applicant registered between 76 - 125 homes in the preceding twelve months; or

(C) $1,000,000 per occurrence, if the applicant registered 126 or more homes in the preceding twelve months.

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section;

(3) A builder-applicant must maintain a general liability policy of:

(A) $300,000 per occurrence, if the applicant registered between 50 - 150 homes in the preceding twelve months;

(B) $500,000 per occurrence, if the applicant registered between 151 - 350 homes in the preceding twelve months;

(C) $1,000,000 per occurrence, if the applicant registered between 351 - 1000 homes in the preceding twelve months; or

(D) $2,000,000 per occurrence, if the applicant registered over 1,000 homes in the preceding twelve months.

(4) A builder-applicant who registered fewer than 50 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(f) Construction Practices.

(1) During the Program Year a member must participate in at least three of the construction practices listed in this subsection. Before committing to participate in any construction practice as a part of the application for membership, the applicant must have the specific knowledge, skills or certification required to participate in the practice. For construction practices requiring Executive Director approval the program information must be submitted with the application. A construction program offered as an element of eligibility under subsection (c) of this section may not also be used to fulfill the requirement of participation in a construction practice under this subsection. Construction practice programs under this section are:

(A) a green building program such as the Model Green Home Builder Guidelines sponsored by the National Association of Builders, or any local governmental authority;

(B) the Energy Star Program;

(C) the Certified Aging-in-place Specialist Program or EasyLiving Home™ Certification Program;

(D) a private inspection program for at lease three (3) phases of construction for all new residential construction projects subject to registration by the commission in geographic area that are not inspected by municipal inspectors; or

(E) the Foundation Practices as defined in this section; or

(F) provide homeowners with whom it enters into a transaction governed by the Act with:

(i) a third-party warranty program offered by a commission-approved third-party warranty company; or

(ii) a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Subchapter B, Chapter 304 of this title; or

(iii) a Customer Service Handbook specific to the member provided for all customers signing contracts with the member for qualifying projects; or

(G) affirm that 8% of homes constructed annually were built in accordance with Universal Design Options as defined by this section; or

(H) any other local or nationally recognized program that requires a greater standard of construction practice than required by the commission pursuant to the commission adopted limited warranty and building and performance standards or usual and customary construction practices or that provides an increased level of service for residential construction consumers, as approved by the Executive Director.

(2) At the end of each program year, the member must provide proof of participation in each of the three construction practices selected at the time of applications.

(g) Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder or remodeler and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) Construction Defects. An applicant is not eligible for membership if the number of homeowner-submitted eligible SIRP requests for alleged construction defects against an applicant that resulted in a finding of a construction defect in the final non-appealable inspection report exceeds:

(1) two homes for applicants that registered 40 or fewer homes in the preceding twelve months; or

(2) five percent of the number of homes registered for applicants that registered more than 40 homes in the preceding twelve months.

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal.

(1) An applicant may submit an application for membership only once during any Program Year.

(2) For each applicant seeking membership under this section, the commission shall publish a notice of application in the *Texas Register*, in a local newspaper of general circulation serving the geographical area in which the applicant maintains its designated address as provided pursuant to §303.13 of this chapter, and on the commission website.

(A) The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice.

(B) The commission will consider comments received in response to published notices of application in the approval process.

(3) Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond to a request for information shall result in the administrative withdrawal of the application.

(4) The commission shall issue a Texas Star Builder certificate of membership to each applicant approved for membership not later than twenty-one days following the expiration of the comment period under this section.

(5) Failure to submit all requested documentation within fifteen days of notice of an incomplete application will result in the administrative withdrawal of the application.

(6) A Texas Star Builder certificate of membership shall remain effective for one Program Year. For the initial year of membership, the hours of continuing education and the number of homes registered for purpose of compliance with selected construction practices will be prorated based on the quarter in which the application is approved for applications approved after September 30 of a Program Year. For purposes of this subsection, the Program Year will be prorated by quarters for periods from October through December, January through March, and April through June.

(j) Continuing education.

(1) All members shall complete at least 16 hours of continuing education per Program Year, except as provided in subsection (h) of this section for the initial year of membership. A member may not submit for credit a continuing education course with the identical course content as one that has been previously submitted for credit by the same member.

(2) Each member shall comply with the continuing education requirements for builders and remodelers set forth in §303.20 of this chapter, in addition to the requirements of this section.

(3) Continuing education courses that satisfy the requirements for continuing education under §303.20(c) of this chapter may be counted towards the continuing education requirements of this section.

(4) For purposes of this requirement:

(A) any individual member must maintain the continuing education requirement;

(B) any member that is a business entity that registered 40 or fewer homes in the preceding twelve months, shall require at least one officer of the member to maintain the continuing education requirement;

(C) any member that is a business entity that registered between 41 - 100 homes in the preceding twelve months shall require that:

(i) one officer of the member and

(ii) one responsible party or one employee of the member who is involved in on-site construction activities maintain the continuing education requirement; and

(D) any member that is a business entity that registered between more than 100 homes in the preceding twelve months shall require that:

(i) one officer of the member and

(ii) one responsible party or one employee of the member who is involved in onsite construction activities; and

(iii) for every 50 homes registered over 100, one employee of the member who is involved in on-site construction activities maintain the continuing education requirement.

(E) Evidence of completion of the continuing education requirements of this section must be submitted with each renewal application.

(5) Approved Continuing Education Courses or Programs.

(A) The commission shall review all courses or programs submitted and shall approve those sufficient to satisfy the continuing education requirement, considering the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters

(B) Any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request on a commission-prescribed form with a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the commission for approval, not later than thirty days prior to the proposed event.

(C) Upon receipt of complete request for approval of a continuing education course or credit, including all information required under division (B) of this paragraph, approval will not be withheld unreasonably.

(6) Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per Program Year for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the Program Year in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit to the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member's leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study. To receive this self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and a description of the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive this instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) Renewal. In order to renew membership in the Texas Star Builder Program, a member must submit a completed application for renewal with the required documentation set forth in this section to the commission not later than June 1 of a Program Year.

(l) Denial.

(1) The commission shall deny an application for membership or the renewal of membership in the Texas Star Builder Program if the commission determines that the applicant is ineligible for admission or for continued membership in the program.

(2) If the commission denies an application for membership or the renewal of membership, the commission shall provide written notice to the applicant not later than the fifteenth business day fol-

lowing the expiration of the public comment period set forth in this section.

(3) The commission shall state the reason(s) for denial of membership or renewed membership in the Texas Star Builder Program in its written notice to the applicant and provide notice of the opportunity for appeal.

(m) Appeal of Denial.

(1) A denial under this section is final unless the applicant timely submits a written request for reconsideration to the Executive Director not later than thirty days from the date of the notice of denial, unless the applicant can show that the notice was not actually received within thirty days of the date of the notice.

(2) The decision of the Executive Director regarding the appeal is a final agency decision not subject to further administrative appeal.

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to Chapter 418 of the Act;

(B) the member used fraud or deceit in obtaining the certificate of membership;

(C) the member is no longer eligible for a Certificate of Registration as a builder or remodeler or is no longer eligible to serve as a designated agent for a builder or remodeler; or

(D) the member's Certificate of Registration in not in good standing;

(E) the member has failed to maintain the program's continuing education requirements as required by this section;

(F) the member fails to demonstrate participation in three construction practices;

(G) the member fails to respond to the commission concerning a complaint; or

(H) the member fails to participate in a SIRP.

(2) If a membership is revoked, the commission shall provide written notice to the member not later than the fifth day after the revocation becomes effective.

(3) The commission shall state the reason(s) for the revocation in its written notice to the member.

(4) A member whose certificate of membership is subject to revocation shall be provided an opportunity for appeal.

(o) Appeal from Revocation.

(1) A member whose membership has been revoked may appeal the decision by submitting a written request for reconsideration to the Executive Director within fifteen days of the date of the notice of revocation. A revocation is final twenty days after the date of mailing of the notice unless the member can show that the notice of request was not actually received within fifteen days of the date of the notice.

(2) The decision of the Executive Director on the appeal of a revocation is a final agency decision not subject to further administrative appeal.

(3) Upon expiration or notice of final revocation of membership in the Texas Star Builder Program, the former member shall immediately return the Texas Star Builder certificate of membership and discontinue the use and dissemination of the "Texas Star Builder" designation on all advertisements, promotions or written material.

(p) Recognition of Membership. A member may display the Texas Star Builder logo so long as that member remains in good standing as a member of the Texas Star Builder Program. Members who have had continuous membership in the Texas Star Builder Program may display the number of years of continuous membership.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706442
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: January 7, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-2886

CHAPTER 305. PRACTICES AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §305.10

The Texas Residential Construction Commission adopts Title 10, Part 7, Chapter 305, Subchapter A, §305.10, relating to a person's false statement, misrepresentation, or refusal to provide information, without changes to the text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7824). The new section implements the provisions of House Bill 1168 of the 80th Texas Legislature, which applies to all licensing agencies. Under House Bill 1168, a "license" means a license, certificate, registration, permit, or other authorization. The commission issues registrations and certificates that fall within the scope of House Bill 1168. Accordingly, the new section implements House Bill 1168 for the commission's regulatory purposes.

The new section provides that a person commits a violation if the person makes a false statement in connection with applying for or renewing a registration or certification with the commission; makes a material misrepresentation to the commission, including a material omission of information, in connection with applying for or renewing the registration or certification; fails or refuses to provide information requested by the commission; or fails or refuses to provide all of the person's criminal history information in response to the commission's request for the information. The new section provides that a request made by the commission may be made via an application form, letter, email, facsimile transmission, or other written form of communication.

If a person violates the new section, the commission could deny the person's application for registration or certification and may suspend or revoke the person's registration or certification. A person subject to the new section would be entitled to the same administrative procedures that govern other denials, suspensions, and revocations by the commission.

The commission received no comments regarding the new section.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and legislative revisions to Government Code chapter 2005, which establish the new statutory authority for denial, suspension, or revocation for false statements, misrepresentation, or refusal to provide information to licensing agencies.

The new section is adopted to implement Property Code §408.001 and Government Code chapter 2005.

No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.50, §3.80

The Railroad Commission of Texas (Commission) adopts amendments to §3.50, relating to Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive, to incorporate changes made by House Bill (HB) 3732, 80th Legislature (2007), Regular Session, and §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, to adopt a new form related to HB 3732 and to amend and delete other forms. The rules are adopted with changes from the versions published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7567).

Section 9 of HB 3732 amends Chapter 202 of the Texas Tax Code, relating to Oil Production Tax, to add new §202.0545, relating to Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide. In general, the bill provides a reduction in the tax rate on oil produced from enhanced recovery projects using anthropogenic carbon dioxide. These changes became effective September 1, 2007.

HB 3732 authorizes the Commission to issue a certification for a severance tax rate reduction on oil produced using anthropogenic carbon dioxide in an enhanced recovery project, if that carbon dioxide is to be sequestered in a reservoir productive of oil or natural gas, and when the Commission finds that there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide sequestered will remain sequestered for at least 1,000 years. The bill requires that the operator employ appropriately designed monitoring and verification measures for a period sufficient to demonstrate whether the sequestration program is performing as expected.

Until the later of the seventh anniversary of the date that the Comptroller of Public Accounts (Comptroller) first approves an application for a tax rate reduction or the effective date of a final rule adopted by the Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an enhanced oil recovery (EOR) project that qualifies under Texas Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the EOR project uses carbon dioxide that: (1) is captured from an anthropogenic source in Texas; (2) would otherwise be released into the atmosphere as industrial emissions; (3) is measurable at the source of capture; and (4) is sequestered in one or more geological formations in this state following the EOR process. The tax reduction on oil is proportional to the percentage of anthropogenic carbon dioxide that satisfies these criteria.

To qualify for the tax rate reduction, the operator must apply for a certification from the Commission if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir; the Texas Commission on Environmental Quality (TCEQ) if the carbon dioxide used in the project is to be sequestered in a geological formation other than an oil or natural gas reservoir; or both agencies if the carbon dioxide used in the project is to be sequestered in an oil or gas reservoir and a geological formation other than an oil or gas reservoir. Then, the operator must apply to the Comptroller.

The agencies may issue a certification only if they find, based on substantial evidence, that there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide sequestered will remain sequestered for at least 1,000 years and will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected. The operator does not qualify for the tax rate reduction if the operator's sequestration program or monitoring and verification measures differ substantially from the planned program.

HB 3732 requires that the Comptroller approve the application if the operator submits the certification(s) and the Comptroller determines that the oil is otherwise eligible. An operator may apply for a tax credit on oil produced over the year.

The Commission received comments from the Texas Oil and Gas Association (TXOGA) and a letter from Occidental Petroleum Ltd. concurring with TXOGA's comments; comments submitted jointly by Environmental Defense; BOP American, Inc.; and Hydrogen Energy International, LLC (the Joint Comments) and comments from Mr. Darrick Eugene.

Mr. Darrick Eugene requested that the Commission allow new §3.50(k) to parallel the appeal process outlined under §3.50(f) and (g)(2)(C) by adding a new paragraph (9) to read as follows: "Opportunity for hearing. A commission representative may administratively approve the application for certification. If the commission representative denies administrative approval, the applicant shall have the right to a hearing upon request. After hearing, the examiner shall recommend final action by the commission." The Commission disagrees that this language is necessary be-

cause an applicant always has the right to a hearing on an administrative denial; nevertheless, the Commission has added similar language in a new paragraph (9) in §3.50(k).

TXOGA recommended that the Commission insert the word "anthropogenic" in §3.50(k)(5)(A) to mirror the wording on proposed Form H-12A and to clarify that the sequestration requirements of subsection (k) apply to the sequestration of anthropogenic carbon dioxide for the purposes of the additional tax rate reduction provided for by HB 3732. The Commission agrees with this comment and has inserted the word "anthropogenic" before "carbon dioxide" in §3.50(k)(5)(A).

TXOGA recommended that the Commission revise the language proposed to be included on Form H-12A to insert the word "anthropogenic" before "carbon dioxide" to clarify that the form applies only to the anthropogenic carbon dioxide. In TXOGA's view, this would ensure that an operator is not required to certify that an entire project must meet this sequestration standard, because TXOGA believes that no project will ever use anthropogenic carbon dioxide or be able to take advantage of this tax benefit. The Commission notes that the stated purpose of Form H-12A is to apply for certification for the additional tax rate reduction for enhanced oil recovery projects using anthropogenic carbon dioxide and, as such, the Form H-12 A simply does not apply to EOR projects that use only non-anthropogenic carbon dioxide. However, the Commission has inserted the word "anthropogenic" before "carbon dioxide" in SECTIONS 7 and 9 of Form H-12A for clarity.

The Joint Comments recommended that the Commission revise the language in §3.50(k)(4)(A) to state that the application for certification must be executed and certified "as provided for on the form" rather than "by a person having knowledge of the facts entered on the form." The Commission agrees with this recommended clarifying change and has revised subsection (k)(4)(A) accordingly.

The Joint Comments recommended that the Commission revise subsection (k)(4)(B) to add a new clause (v) that would require an applicant for the additional tax rate reduction to provide a description of the planned sequestration program reasonably expected to ensure that at least 99% of the sequestered carbon dioxide will remain sequestered for at least 1,000 years. The Joint Comments also recommended that the Commission revise the language in renumbered clause (vi) (proposed as clause (v)) to require that the applicant state the planned duration of the applicant's proposed monitoring and verification measures. The Commission agrees with these comments and has made the suggested clarifications in the adopted rule.

The Joint Comments recommended that in §3.50(k)(7) the Commission replace the word "approved" with the word "certified," and add a reference to subsection (k)(5), so that the paragraph reads as follows: "The additional tax rate reduction under this subsection does not apply and the operator will be required to repay the amount of tax that would have been imposed in the absence of this subsection if the operator's sequestration program or the operator's monitoring and verification measures differ substantially from the planned program certified by the Commission under subsection (k)(5) of this section." The Commission agrees with this comment and has made the clarifying change.

The Joint Comments recommended that the Commission revise §3.50(k)(8) to add the following sentence: "In the event that the operator's sequestration program, including monitoring and verification measures, differs substantially from the program certified by the Commission under subsection (k)(5) of this section, the operator shall include a report describing the material changes in the sequestration program with the Annual Report." The Commission agrees with this suggested clarification and has added a slightly modified version of the recommended sentence.

The Joint Comments recommended that the Commission revise Form H-12A to include instructions. The Commission finds that instructions for this relatively simple form are unnecessary, particularly when the form is read in conjunction with §3.50(k) and Texas Tax Code, §202.0545. However, the Commission has included in the upper right-hand corner of the form a prominent reference to §3.50(k).

The Joint Comments recommended that the Commission revise Form H-12A to conform the wording for the third box in Item 9 of the form to the rule language regarding the planned duration of the monitoring and verification measures that the Joint Comments recommended for §3.50(k)(4)(B). The Commission agrees with this comment and has made the recommended change on Form H-12A.

The Joint Comments recommended that the Commission revise Form H-14, Enhanced Oil Recovery Reduced Tax Annual Report, to add instructions, to add a new box to item number 13 on the form regarding "Attachment Checklist" for "Changes in Sequestration Program (if applicable)," and to add a new box to item number 13 on the form for "Annual Monitoring & Verification Results." The Commission notes that Form H-14 already includes instructions, and the Commission did not propose changes to those instructions in this rulemaking. The Commission agrees with the remainder of this comment, however, and has revised Form H-14 to add a new box to the checklist to request a description of changes in the sequestration program, if applicable.

TXOGA commented on the proposed revisions to Form P-17, Application for Exception to Statewide Rules (SWR) 26 and/or 27, and requested that in SECTION 3, the Commission add clarification to parts "g" and "h" in that "an exception to metering is the same as allocation by well test." The Commission agrees that some clarification is necessary and, in response to this comment, has added to (g) and (h) additional boxes for "allocation by well test" and "other."

TXOGA also recommended that the Commission delete box "i" in SECTION 3 of Form P-17 because the Commission's rules do not specify a particular method or type of equipment that must be used, and the use of a turbine or Coriolis meter to measure liquid is not an exception for which a $150 exception fee is required. TXOGA recommended that the Commission delete the second sentence of the section relating to "Fees" for certain meters for the same reasons discussed above because the Coriolis meter has been in service many years and questions about its reliability have been answered. In addition, TXOGA stated that API MPMS 5-1 (2005) discusses various meters and their applicability and that meter selection should be based on this or other accepted industry standards.

The Commission does not agree that use of a turbine or Coriolis meter to measure liquid is not an exception for which a fee is required. The Commission's rules require that production be measured accurately and that the method of allocating production to individual interests accurately attribute to each interest its fair share of aggregated production. The Commission's rules further require that measurement follow the procedures the Commission established in *Gas-Oil Ratio Calculation* and *Back Pressure Test for Natural Gas Wells*, which authorize the use of orifice me-

ters, positive displacement, and direct measurement for oil. In order to add the use of a Coriolis meter as an authorized method of measurement, the rules and/or publications would need to be amended; and the Commission did not propose to amend such rules and publications in this rulemaking. However, Commission staff would welcome the opportunity to discuss a proposal to amend the rules and/or publications to include the use of the Coriolis meter or other measurement methods and any documentation the commenter can provide that the measurement method yields an equally accurate measurement of production.

TXOGA commented that the Commission should revise SECTION 4 on proposed Form P-17, relating to Notice Requirements, to show options for allocation of production as "well tests" or "other." TXOGA stated that well tests include reports on W-10s, G-10s, and testing using positive displacement meters and that other measurement options also are available, such as different meters. TXOGA further stated that the statutes and rules require a method of allocation to accurately attribute each interest its fair share. Finally, TXOGA stated, there should be no fee for selection of a particular allocation method or meter.

The Commission does not agree with this comment. The methods listed (W-10, G-10, and positive displacement) are the only ways to allocate production. In addition, the Commission does not charge a separate fee for selection of an allocation method.

TXOGA commented that the Commission should delete the word "oil" in SECTION 6 on the front of Form P-17 and in the instructions for SECTION 6, because Form P-17 is for commingling of production from both oil leases and gas leases under Statewide Rules 26, 27, and 55. The Commission disagrees with this comment. The instructions for SECTION 6 clearly state that the section applies only to oil production (commingling of oil within a lease from some or all wells on the oil lease). Nevertheless, the Commission has added the clause "for oil production" for clarification in SECTION 6. In addition, the Commission has made grammatical corrections to the instructions for SECTION 6.

TXOGA also stated that fees should not be required for deletion of a lease from a commingle permit, because this is not a request for an exception and is not authorized by Rule 78 or the statutes. The Commission disagrees with TXOGA's comment with respect to the fee; the Commission does not require a $150 fee for a Form P-17 for which the only action is deletion of a lease or leases. Nevertheless, the Commission has added clarifying language to that effect in the instructions regarding "Fees."

Under "Purpose of Filing," TXOGA recommended that the Commission add "casinghead gas and gas well gas," because the Commission's rules allow for commingling and they also are reported on Form PR; and commingle permit numbers are assigned when any production is commingled at a facility and reported on the production report. Also under "Purpose of Filing," TXOGA recommended revising the language in item (1) to include casinghead gas and gas well gas, to delete "oil and condensate," and delete all the text following the word "facility." TXOGA's proposed wording reads as follows: "(1) surface commingling of oil, condensate, casinghead gas, gas well gas or a combination of any production into a common facility."

The Commission disagrees with this comment. The Commission does not assign a commingling number for commingling of gas only. Commingling of gas is implied by metering exceptions as shown in SECTION 3 of the form. However, the Commission has revised the language to clarify that a commingling number will be assigned for surface commingling of gas and hydrocarbon liquids.

TXOGA recommended that the Commission amend the instructions regarding "Purpose of Filing" to require that only SECTIONS 1 through 7 on Form P-17 be completed when an application is being amended. TXOGA reasoned that, because it is not uncommon for leases to be added or deleted frequently, by including the whole list of leases with each amendment, errors could be minimized, thus also reducing non-compliance and severance issues. TXOGA also recommended that the Commission accept scanned color documents and provide for electronic submission of commingle applications.

The Commission's efforts to consolidate commingling forms and the new Form P-17 are a part of the Commission's attempts to ready the form for electronic filing. Rule 3.80(e)(1) states that "(A)n organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing." The Commission plans to develop an electronic filing system for Form P-17 that will allow an operator to file only changes (additions, deletions, etc.) after an initial filing. However, the Commission is not yet ready to accept Form P-17 filings electronically.

TXOGA recommended that under "Important Terms," the Commission define "off-lease storage" as "storage located off lease of all of the leases included in the commingle agreement." The Commission agrees that some clarification is warranted and has added the term "off-lease" to the list of "Important Terms," and defined it as "a location or lease not listed in this commingling application."

TXOGA commented that, in the instructions for SECTION 3, Request to Commingle, that the Commission should delete references to Form P-4, because this form is currently under review and discussion, including moving transporter information to a different form. The Commission disagrees. Form P-4 has not been revised to remove transporter information. When and if that happens, the Commission will consider the need to revise Form P-17.

In the instructions for SECTION 4, relating to notice requirements and allocation methods, TXOGA recommended that the Commission add instructions for "Box 4.b." The Commission disagrees with this comment. As stated in §3.26(b)(1)(A), the Commission may administratively approve surface commingling when one of several conditions is met; one condition is that the tracts or Commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages and, therefore, there is no commingling of separate interests. Because the language is in §3.26(b)(1)(A), the Commission finds that the recommended statement is unnecessary. The Commission made no change in response to this comment.

The Commission amends §3.50(a) to add a reference to Texas Tax Code, §202.0545, Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide.

The Commission amends §3.50(c) to add a definition for anthropogenic carbon dioxide. The Commission defines anthropogenic carbon dioxide to mean carbon dioxide produced as a result of human activities. Potential sources of relatively large quantities of anthropogenic carbon dioxide include ammonia plants, gas plants, and gasification plants. In subsection

(h)(2)(B), the Commission adds a reference to anthropogenic carbon dioxide.

The Commission adds new subsection (k), pertaining to the standards and procedures applicable to obtaining an additional tax reduction for an enhanced recovery project using anthropogenic carbon dioxide. New subsection (k)(1) states that, subject to the limitations provided by Texas Tax Code, §202.0545, until the later of the seventh anniversary of the date that the Comptroller first approves an application for a tax rate reduction under this subsection or the effective date of a final rule adopted by the United States Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an EOR project that qualifies under Texas Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if, in the recovery of the oil, the EOR project uses carbon dioxide that is captured from an anthropogenic source in this state; would otherwise be released into the atmosphere as industrial emissions; is measurable at the source of capture; and is sequestered in one or more geological formations in this state following the EOR process.

New subsection (k)(2) states that, in the event that a portion of the carbon dioxide used in the EOR project is anthropogenic carbon dioxide that satisfies the criteria of paragraph (1) of subsection (k) and a portion of the carbon dioxide used in the project fails to satisfy the criteria of paragraph (1) because it is not anthropogenic, the tax reduction provided by paragraph (1) shall be reduced to reflect the proportion of the carbon dioxide used in the project that satisfies the criteria of paragraph (1).

New subsection (k)(3) states that, in order to qualify for the tax rate reduction, the operator must apply for a certification from the Railroad Commission of Texas, if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir and apply to the Comptroller for the reduction and include with the application any information and documentation that the Comptroller may require.

New subsection (k)(4) contains the application requirements. To qualify for the reduced recovered oil tax rate, the operator must submit an application for approval on the appropriate form. All applications must be filed at the Commission's Austin Office, provide the Commission with any relevant information required to administer this subsection such as plats showing the proposed project area and all wells within the area, production and injection history, planned enhanced oil recovery procedures, and any other pertinent data. The application must be executed and certified as provided for on the application form.

New subsection (k)(5) states that the Commission may issue the certification for the reduced tax rate under this subsection only if the Commission finds that, based on substantial evidence, there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the anthropogenic carbon dioxide will remain sequestered for at least 1,000 years and the operator's planned sequestration program will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

New subsection (k)(6) states that the operator is responsible for making application to the Comptroller for the additional tax rate reduction.

New subsection (k)(7) states that the tax rate reduction does not apply if the operator's sequestration program or monitoring and verification measures differ substantially from the planned program approved by the Commission and that the operator will be required to refund the difference between the amount of the tax paid under this section and the amount that would have been imposed in the absence of this section.

New subsection (k)(8) provides that, in conjunction with the Annual Report required to be filed under §3.50(h), an operator must submit information concerning the operator's monitoring and verification measures results as proposed in the application for certification to demonstrate whether the sequestration program is performing as expected.

New subsection (k)(9) provides that a Commission representative may administratively approve or deny an application for certification. If the Commission representative administratively denies an application, the applicant has the right to a hearing upon request. After hearing, the examiner will recommend final action by the Commission.

The Commission also amends §3.80, Commission Oil and Gas Forms, Applications, and Filing Requirements, to add a new form and amend or delete other forms. The Commission adopts new Form H-12A, Application for Certification for Additional Tax Rate Reduction for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide. The form requests information necessary for Commission staff to determine whether the proposed project meets the statutory requirements in Texas Tax Code, §202.0545. The proposed project must qualify for the tax rate reduction in Texas Tax Code, §202.054, before it can be considered for the additional tax rate reduction in Texas Tax Code, §202.0545; therefore, the form requests the EOR project's certification number and date of certification for the tax rate reduction under Texas Tax Code, §202.054. If the project is new, the applicant must also submit Form H-12A with Form H-12, New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application. Items 6, 7, and 9 on Form H-12A request information to determine whether the proposed project meets the criteria included in Texas Tax Code, §202.0545. Item 8 of Form H-12A requests the percentage of injection fluid that is anthropogenic carbon dioxide, because the additional tax rate reduction is proportional to the percentage of anthropogenic carbon dioxide that satisfies the criteria. Form H-12A must be signed by a person authorized to make the application and knowledgeable of the data and facts contained in the application.

The Commission also amends Form H-14, Enhanced Oil Recovery Reduced Tax Annual Report, to provide a space to report the annual injection volume of anthropogenic carbon dioxide.

The Commission amends Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, to replace the reference to Uniform Customs and Practices (UCP) #500 with UCP #600, and to replace the revision date of 1993 with 2007. The revision from #500 to #600 was effective on July 1, 2007.

The Commission also revises the effective date indicated on Table 1 for Form P-13, Application of Landowner to Condition an Abandoned Well for Fresh Water Production, to correct the last revision date from 1979 to October 2004.

The Commission revises Form P-17, Application for Exception to Statewide Rules 26 and/or 27 (Commingling), and deletes from Table 1 Form P-17A, Interim Commingling/Measurement Application Supplement. The Commission has consolidated the Form P-17 for oil and gas in order to streamline the reporting process and facilitate internal processing. Changes to the Form P-17 include clearer instructions and broader reporting options

that allow an RRC identifier to be used when identifying commingled leases that are pending a lease number assignment. The revised Form P-17 also includes an attachment page for ease of filing multiple leases on one commingling permit application. Form P-17 will require data in a format that is more compatible with the Commission's automated production reporting system, which will result in more efficient tracking of commingled production.

The Commission deletes from Table 1 Form W-1X, Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit, because this form is no longer necessary. The Commission amends Table 1 to delete the Franchise Tax Certification form. The 77th Texas Legislature (2001) repealed the statutory requirement for such certification. These form modifications may be viewed online at www.rrc.state.tx.us/rules/proposed.html.

The Commission adopts the amendments to §3.50 and §3.80 to incorporate the changes made by HB 3732, 80th Legislature (2007), Regular Session. These changes are made pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code, §§85.042, 85.202, 86.041, and 86.042, which require the Commission to adopt rules to control waste of oil and gas; and Texas Tax Code, §202.0545, relating to Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.024, 85.202, 86.041, and 86.042; and Texas Tax Code, §202.0545.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.202, 86.041, and 86.042; and Texas Tax Code, §202.0545.

Issued in Austin, Texas, on December 18, 2007.

§3.50. Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive.

(a) Purpose. The purpose of this section is to provide a procedure by which an operator can obtain Railroad Commission approval and certification of enhanced oil recovery (EOR) projects pursuant to Texas Tax Code, §202.052, §202.054, and §202.0545.

(b) Applicability.

(1) This section applies to:

(A) new EOR projects and the change from secondary EOR projects to tertiary projects which qualify as new EOR projects, and which begin active operation on or after September 1, 1989; and

(B) expansions of existing EOR projects.

(2) An EOR project may not qualify as an expansion if the project has qualified as a new EOR project under this section.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active operation--The start and continuation of a fluid injection program for a secondary or tertiary recovery project to enhance the displacement process in the reservoir. Applying for permits and moving equipment into the field alone are not considered active operations.

(2) Anthropogenic carbon dioxide--Carbon dioxide produced as a result of human activities.

(3) Commission--The Railroad Commission of Texas.

(4) Commission representative--A commission employee authorized to act for the commission. Any authority given to a commission representative is also retained by the commission. Any action taken by the commission representative is subject to review by the commission.

(5) Comptroller--The Comptroller of Public Accounts.

(6) Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(7) Existing enhanced recovery project--An EOR project that has begun active operation but was not approved by the Commission as a new EOR project.

(8) Expanded enhanced recovery project or expansion--The addition of injection and producing wells, the change of injection pattern, or other commission approved operating changes to an existing enhanced oil recovery project that will result in the recovery of oil that would not otherwise be recovered.

(9) Fluid injection--Injection through an injection well of a fluid (liquid or gaseous) into a producing formation as part of an EOR project.

(10) Incremental production--The volume of oil produced by an expanded enhanced recovery project in excess of the production decline rate established under conditions before expansion of an existing enhanced recovery project.

(11) Oil recovery from an enhanced recovery project--The oil produced from the designated area the commission certifies to be affected by the project.

(12) Operator--The person recognized by the commission as being responsible for the actual physical operation of an EOR project and the wells associated with the EOR project.

(13) Positive production response--Occurs when the rate of oil production from wells within the designated area affected by an EOR project is greater than the rate that would have occurred without the project.

(14) Pressure maintenance--The injection of fluid into the reservoir for the purpose of maintaining the reservoir pressure at or near the bubble point or other critical pressure wherein fluid injection volumes are not sufficient to refill existing reservoir voidage in the approved project area and displace oil that would not be displaced by primary recovery operations.

(15) Primary recovery--The displacement of oil from the reservoir into the wellbore(s) by means of the natural pressure of the oil reservoir, including artificial lift.

(16) Production decline rate--The projected future oil production from a project area as extrapolated by a method approved by the commission.

(17) Recovered oil tax rate--The tax rate provided by the Tax Code, §202.052(b).

(18) Secondary recovery project--An enhanced recovery project that is not a tertiary recovery project.

(19) Termination--Occurs when the approved fluid injection program associated with an EOR project stops or is discontinued.

(20) Tertiary recovery project--An EOR project using a tertiary recovery method (as defined in the federal June 1979 energy regulations referred to in the Internal Revenue Code of 1986, §4993, or approved by the United States secretary of the treasury for purposes of administering the Internal Revenue Code of 1986, §4993, without regard to whether that section remains in effect) including those listed as follows:

(A) Alkaline (or caustic) flooding--An augmented waterflooding technique in which the water is made chemically basic as a result of the addition of alkali metals.

(B) Carbon dioxide augmented waterflooding--Injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(C) Cyclic steam injection--The alternating injection of steam and production of oil with condensed steam from the same well or wells.

(D) Immiscible carbon dioxide displacement--Injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained.

(E) In situ combustion--Combustion of oil in the reservoir, sustained by continuous air injection, to displace unburned oil toward producing wells.

(F) Microemulsion, or micellar/emulsion, flooding--An augmented waterflooding technique in which a surfactant system is injected in order to enhance oil displacement toward producing wells. A surfactant system normally includes a surfactant, hydrocarbon, cosurfactant, an electrolyte and water, and polymers for mobility control.

(G) Miscible fluid displacement--An oil displacement process in which gas or alcohol is injected into an oil reservoir, at pressure levels such that the injected gas or alcohol and reservoir oil are miscible. The process may include the concurrent, alternating, or subsequent injection of water. The injected gas may be natural gas, enriched natural gas, a liquefied petroleum gas slug driven by natural gas, carbon dioxide, nitrogen, or flue gas. Gas cycling, i.e., gas injection into gas condensate reservoirs, is not a miscible fluid displacement technique nor a tertiary enhanced recovery technique within the meaning of this section.

(H) Polymer augmented waterflooding--Augmented waterflooding in which organic polymers are injected with the water to improve a real and vertical sweep efficiency.

(I) Steam drive injection--The continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells).

(21) Water disposal project--The injection of produced water into the reservoir for the purpose of disposing of the produced water wherein the water injection volumes are not sufficient to refill existing reservoir voidage in the approved project area and displace oil that would not be displaced by primary recovery operations.

(d) Application requirements. To qualify for the recovered oil tax rate the operator shall:

(1) submit an application for approval on the appropriate form. All applications must be filed at the Commission's Austin office. The form shall be executed and certified by a person having knowledge of the facts entered on the form. If an application is already on file under the Natural Resources Code, Chapter 101, Subchapter B, or for approval as a tertiary recovery project for purposes of the Internal Revenue Code of 1986, §4993, the operator may file a new EOR project and area designation application if the active operation of the project does not begin before the application under this section is approved by the Commission;

(2) submit all necessary forms to the Oil and Gas Division and provide the Commission with any relevant information required to administer this section such as: area plats showing the proposed project area and all injection and producing wells within the area, production and injection history, planned enhanced oil recovery procedures, and any other pertinent data;

(3) obtain a unitization agreement if required for purposes of carrying out the project under the Natural Resources Code, Chapter 101, Subchapter B. The Commission may not approve the project unless the unitization is approved; and

(4) submit an application on the appropriate form and obtain the necessary permits to conduct fluid injection operations pursuant to §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Statewide Rule 46), if such permits have not already been obtained.

(e) Concurrent applications. The operator may file concurrently:

(1) an application for approval of a new or expanded EOR project under this section, together with;

(2) an application for approval of a unitization agreement for purposes of carrying out the enhanced oil recovery project under the Natural Resources Code, §§101.001 et seq.; or

(3) an application for approval for certification of the project as a tertiary recovery project.

(f) Opportunity for hearing. A commission representative may administratively approve the application. If the commission representative denies administrative approval, the applicant shall have the right to a hearing upon request. After hearing, the examiner shall recommend final action by the commission.

(g) Approval and certification.

(1) Project approval. In order to be eligible for the recovered oil tax rate as provided in the Tax Code, §202.052(b), the operator shall apply for and be granted Commission approval of a new EOR project or an expansion of an existing EOR project, prior to commencing active operation of the new project or expanded project. For a project to be approved the operator shall:

(A) prove that it qualifies as an EOR project;

(B) designate the area to be affected by the project and obtain Commission approval of the designation; and

(C) if production from the wells within the project area is reported with production from wells not in the project area, designate the method to account for and report production from the project area.

(2) Positive production response certificate.

(A) The operator of an EOR project that meets the requirements of this section shall demonstrate to the Commission a positive oil production response before the operator can receive Commission certification of such a positive production response. The certification date may be any date desired by the operator, subject to Commission approval, following the date on which a positive oil production response first occurred. The operator shall apply for a positive production response certificate within three years of project approval for secondary projects, and within five years of project approval for tertiary

projects, to qualify for the recovered oil tax rate. The oil produced from the designated area of a new EOR project or incremental oil produced from the designated area of an expanded EOR project after the date of certification of a positive production response is eligible for the recovered oil tax rate. The operator shall apply to the comptroller pursuant to the Tax Code, §202.052 and §202.054, to qualify for the recovered oil tax rate.

(B) The application for positive response certification shall include:

(i) production and injection graphs with supporting tabular data illustrating a positive production response and volumes of water or other substances that have been injected on the designated area since the initiation of the new or the expanded EOR project;

(ii) a plat of the affected area showing all injection and producing wells, with completion dates; and

(iii) any other data requested by the Oil and Gas Division.

(C) The application for the positive production response certificate shall be processed administratively. If the Commission representative denies administrative approval, the applicant shall have the right to a hearing upon request. After hearing, the examiner shall recommend final action by the Commission.

(h) Annual reporting.

(1) The operator shall file an annual report on the appropriate form with the Oil and Gas Division each year the project remains eligible for the reduced severance tax rate. This form shall be filed within 30 days of the first anniversary of the date that the Commission acted on the EOR positive production response certification application and annually thereafter.

(2) The report shall contain the following:

(A) Commission certification date of positive production response;

(B) monthly volume of injected fluid(s) and anthropogenic carbon dioxide;

(C) number of well(s) used for injection;

(D) monthly production of oil, gas, and water;

(E) number of active producing wells; and

(F) any other relevant information requested by the Oil and Gas Division.

(i) Reduced or enlarged areas. The operator may apply for reduced or enlarged project area certification if the application for reduction or enlargement is received prior to the filing of an application for positive production response certification of the original enhanced oil recovery project.

(j) Termination and penalty. Upon approval by the Commission and the comptroller, the recovered oil tax rate shall continue for a maximum of 10 years, unless the project is sooner terminated. If the project is terminated prior to the 10-year period, the operator shall notify the Commission and the comptroller in writing within 30 days after the last day of active operations. Failure to so notify may result in civil penalties, interest, and the tax due. If the Commission determines a project has been terminated or there is action that affects the tax rate, it shall notify the comptroller immediately in writing.

(k) Additional tax rate reduction for enhanced recovery projects using anthropogenic carbon dioxide.

(1) Subject to the limitations provided by Texas Tax Code, §202.0545, until the later of the seventh anniversary of the date that the Comptroller of Public Accounts first approves an application for a tax rate reduction under this subsection or the effective date of a final rule adopted by the United States Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an EOR project that qualifies under Texas Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the EOR project uses carbon dioxide that:

(A) is captured from an anthropogenic source in this state;

(B) would otherwise be released into the atmosphere as industrial emissions;

(C) is measurable at the source of capture; and

(D) is sequestered in one or more geological formations in this state following the EOR process.

(2) In the event that a portion of the carbon dioxide used in the EOR project is anthropogenic carbon dioxide that satisfies the criteria of paragraph (1) of this subsection and a portion of the carbon dioxide used in the project fails to satisfy the criteria of paragraph (1) of this subsection because it is not anthropogenic, the tax reduction provided by paragraph (1) of this subsection shall be reduced to reflect the proportion of the carbon dioxide used in the project that satisfies the criteria of paragraph (1) of this subsection.

(3) To qualify for the tax rate reduction under this subsection, the operator shall:

(A) apply for a certification from the Commission if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir; and

(B) apply to the Comptroller of Public Accounts for the reduction and include with the application any information and documentation that the comptroller may require.

(4) To qualify for the additional reduced recovered oil tax rate under this subsection the operator shall:

(A) submit an application for certification to the Commission's Austin Office for approval on the appropriate form that is executed and certified as provided for on the form; and

(B) provide the Commission with:

(i) plats showing the proposed project area and all wells within the area;

(ii) production and injection history;

(iii) planned enhanced oil recovery procedures;

(iv) information to demonstrate that the carbon dioxide to be injected is anthropogenic and a description of the method(s) of capturing and measuring the captured carbon dioxide at the source;

(v) a description of the planned sequestration program reasonably expected to ensure that at least 99% of the sequestered carbon dioxide will remain sequestered for at least 1,000 years;

(vi) planned monitoring and verification measures, including the planned duration of such measures, that will be employed to demonstrate that the sequestration program is performing as expected; and

(vii) any other pertinent information requested by the Commission.

(5) The Commission may issue the certification for the reduced tax rate under this subsection only if the Commission finds that, based on substantial evidence, there is a reasonable expectation that:

(A) the operator's planned sequestration program will ensure that at least 99 percent of the anthropogenic carbon dioxide sequestered will remain sequestered for at least 1,000 years; and

(B) the operator's planned sequestration program includes appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

(6) The operator is responsible for making application to the Comptroller of Public Accounts for the additional tax rate reduction.

(7) The additional tax rate reduction under this subsection does not apply and the operator will be required to repay the amount of tax that would have been imposed in the absence of this subsection if the operator's sequestration program or the operator's monitoring and verification measures differ substantially from the planned program approved by the Commission.

(8) In conjunction with the Annual Report required to be filed under subsection (h) of this section, an operator shall submit information concerning the operator's monitoring and verification measures results as proposed in the application for certification to demonstrate whether the sequestration program is performing as expected. In the event that the operator's sequestration program, including monitoring and verification measures, differs substantially from the program certified by the Commission under subsection (k)(5) of this section, the operator shall include with the Annual Report a written description of any material changes in the sequestration program.

(9) A Commission representative may administratively approve or deny an application for certification. If the Commission representative administratively denies an application, the applicant shall have the right to a hearing upon request. After hearing, the examiner shall recommend final action by the Commission.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

(4) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of

the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to confirm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

(f) Other electronic transmissions. The Commission may at its discretion accept other documents or data electronically transmitted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas adopts amendments in 16 Texas Administrative Code, Chapter 9, Subchapter A, to §§9.1 - 9.3, new 9.4, amendments to §§9.7, 9.17, 9.21, 9.27, 9.28, new §9.32, amendments to §§9.35, 9.37, and 9.41, relating to Application of Rules, Severability, and Retroactivity; Definitions; LP-Gas Report Forms; Records and Enforcement; Application for License and License Renewal Requirements; Designation and Responsibilities of Company Representative and Operations Supervisor; Franchise Tax Certification and Assumed Name Certificates; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; Consumer Safety Notification; Written Procedure for LP-Gas Leaks; Termination of LP-Gas Service; and Testing of LP-Gas Systems in School Facilities.

In Subchapter B, with a new title of LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission adopts amendments to §§9.101, 9.114, 9.129, 9.130, 9.131, 9.134, 9.135, 9.136, 9.137, 9.140, 9.141, 9.142, and 9.143, relating to Filings Required for Stationary LP-Gas Installations; Odorizing and Reports; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; 200 PSIG Working Pressure Stationary Vessels; Connecting Container to Piping; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; Inspection of Containers at Each Filling; Uniform Protection Standards; Uniform Safety Requirements; LP-Gas Container Storage and Installation Requirements; and Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, the Commission adopts amendments to §§9.206, 9.208, and 9.211, relating to Vehicle Identification Labels; Testing Requirements; and Markings.

In Subchapter D, the Commission adopts amendments to §§9.301, 9.302, 9.303, 9.306, 9.307, 9.308, 9.311, 9.312, and 9.313, relating to Adoption by Reference of NFPA 54; Clarification of Certain Terms Used in NFPA 54; Exclusion of NFPA, §10.29; Room Heaters in Public Buildings; Identification of Converted Appliances; Identification of Piping Installation; Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; Certification Requirements for Joining Methods; and Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted.

In Subchapter E, the Commission adopts amendments to §§9.401-9.403, relating to Adoption by Reference of NFPA 58; Clarification of Certain Terms Used in NFPA 58; and Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

Sections 9.2, 9.7, 9.35, 9.37, 9.129, 9.134, 9.137, 9.140, 9.143, and 9.313 are adopted with changes, and the remaining sections are adopted without changes from the versions published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7583).

The Commission received comments from two individuals and from the Texas Propane Gas Association (TPGA).

One commenter stated that in the definition of "transfer equipment" in §9.2(53), bulkhead should also be included as transfer equipment. The Commission agrees and has made this change.

TPGA commented that it supports the recordkeeping requirements in proposed new §9.4 to go along with removing the tagging requirements in §§9.141, 9.206, 9.307, and 9.308.

A commenter challenged the wording in §9.7, and asked why, if one is exempted from licensing, one still needs to get a license. The commenter said this wording contradicts Texas Natural Resources Code, §§113.003, 113.081, and 113.082. The Commission agrees that the wording should be clarified, and adopts subsection (c) to read: "A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided in §113.081(g) *if the entity is performing work for itself on its own behalf, but is required to be licensed to perform work for or on behalf of a second party*."

Regarding §9.17(a)(3), which requires a telephone number be posted at an outlet with the number of the operations supervisor or the certified employee responsible for that outlet, who must monitor the telephone number and respond to calls during normal business hours, one commenter disagreed with this change. The commenter does not want the general public contacting the company's drivers based on the information provided by this sign. Many times, this telephone number would be for a cell phone, and that would be an extra cost for the company. The commenter stated his company would provide specific contact phone numbers for any of his company's storage locations in Texas if needed.

The Commission disagrees with this comment. The proposed amendment clarified a previous rulemaking, which eliminated a long-standing requirement that affected licensees with multiple outlets. The previous rule required an operations supervisor who had passed a manager's examination with the Commission to supervise each outlet. The Commission removed that requirement but continued to require that someone with an employee certification must be assigned as the responsible person for each outlet that operated without an operations supervisor. This was strictly a safety requirement; if there was a problem with an outlet, the Commission must be able to locate a company employee to address the problem. The proposed amendment in §9.17(a) provides an option of posting at an outlet the telephone number of the certified employee assigned as the responsible person for that outlet, or the operations supervisor's telephone number. The Commission finds that this requirement is reasonable because it gives the licensee an option to either employ an operations supervisor at every outlet or have a certified employee's telephone number posted. The Commission and local emergency responders must be able to contact a responsible, Commission-certified employee to discuss inspection results and safety issues at every outlet.

The Commission adopts a change in §9.35 to add a title on the table in the rule.

Regarding §9.37, a commenter stated that the new wording conflicts with Natural Resources Code, §113.234, because the statute states a tag "shall" be attached to an unsafe installation, not "may be." The commenter understood the reason for the proposed change, but suggested that the statute should be changed. The Commission proposed these amendments to allow the Safety Division the option of affixing a warning tag or taking alternate measures to address a hazardous situation. Warning tags can be intentionally or unintentionally obliterated or removed, or go unnoticed by personnel servicing the equipment. In addition, §9.37(a) mandates that a warning tag, once affixed, must be removed by the Division, which can create a conflict between the Division's ability to schedule a Commission employee to remove the warning tag, and the need of the licensee or owner of the equipment to return it to service once the hazard has been mitigated. The Commission agrees that the wording should be clarified; therefore, the Commission adopts the following wording for the last two sentences of subsection (a): "A warning tag shall be installed by the Division until the unsafe condition is remedied. Once the unsafe condition is corrected, the tag may be removed if authorized by the Division." The Commission finds that this wording more accurately reflects the Commission's intent: the warning tag *shall* be installed by the Division, and *may* be removed if authorized by the Division.

Regarding §9.101, one commenter suggested deleting the nonrefundable $35 fee required for any resubmission of LPG Form 501, stating that the fee is unreasonable. The Commission disagrees with the comment and notes that the $35 resubmission fee became effective September 1, 2005, and was not part of this proposed rulemaking.

TPGA proposed to change §9.101(a)(2) which currently requires a nonrefundable fee of $10 for each LP-gas container, including cylinders, each retail LP-gas cylinder exchange storage rack, and each forklift cylinder exchange rack or a forklift cylinder installation where a storage rack is not installed that is listed on LPG Form 501. A nonrefundable $35 fee is also required for any resubmission. TPGA recommended that the rule should require a nonrefundable fee of $10 when filing Form 501 for each stationary commercial LP-gas installation and recommended deleting the $35 resubmission fee. TPGA stated that the current language in §9.101 implies that an individual fee must be paid for every container, and the proposed change reflects how the rule is currently being administered by the Commission and adds clarification.

The Commission disagrees with these comments; the Commission proposed no changes in §9.101(a), so the suggested changes are outside the scope of notice for this rulemaking.

One individual commented that §9.113 should state that an appliance needs to be "installed" and maintained in accordance with its manufacturer's instructions. The Commission did not propose any amendments to §9.113 in this rulemaking and therefore cannot make any changes to the rule at this time.

Regarding the nameplate requirements in §9.129, one commenter stated that the ASME Code (ug-116-118) does not require a vessel to have a nameplate, but if the tank is thick enough, the required information can be stamped into the vessel. Stamp markings are permanent and are not subject to rust, corrosion, etc. Because of the vessel thickness, this may not be permitted on small house tanks. The Commission notes that the ASME Code may not require a nameplate, but both the current Commission's LP-Gas Safety Rules and NFPA 58 require a nameplate on ASME containers in LP-gas service. Manufacturer container information on a stainless steel nameplate, continuously fusion welded around its perimeter, eliminates the problem of damaging a vessel from stamping because of inadequate shell thickness. The ASME Code also permits nameplate attachment by means other than continuous fusion welding, but the Commission finds that the current LP-Gas Safety Rules require the most legible, secure, and durable means of providing the licensee and consumer with the manufacturer's container information. The Commission adopts the wording without changes based on these comments. The Commission adopts in §9.129(e)(12) the word "degrees" instead of the degree symbol; the degree symbol does not appear accurately in some software versions.

Two commenters offered suggestions for §9.134. An individual stated that the wording "properly tagged" should be deleted as the piping tag requirements in another section were being deleted.

TPGA stated that additional changes to §9.134 are necessary. The intent of this rule is to allow general installers and repairmen, as well as individuals outlined in §9.13, to install LP-gas piping. A propane retailer may connect to piping installed by an unlicensed person, provided that the retailer has performed a leakage test, verified the piping has been installed according to the LP-Gas Safety Rules, and filed a properly-completed LPG Form 22 with the Safety Division identifying the unlicensed person who installed the piping. If the retailer does NOT know who piped the installation, the Commission suggests that the retailer get a written statement from the owner of house or facility that the installer is unknown. The LPG Form 22 is not needed because it is not going to tell the Commission anything; however, this is not stated in the rules. Therefore, TPGA suggested the following changes in the last sentence of §9.134, in addition to the Commission's proposed amendments: "A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the *accessible and visible* piping has been installed according to the LP-Gas Safety Rules," delete the phrase "properly tagged the installation," and add "and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicensed person who installed the LP-gas piping *only if known*." TPGA stated that adding the words "accessible and visible" would clarify the rule because much of the piping is beyond reach. As originally worded, individuals would be required to tear out walls to examine piping. TPGA also suggested deleting the phrase "properly tagged the installation" to be consistent with the proposed removal of the tagging requirements elsewhere.

The Commission agrees with both comments regarding §9.134. A licensee may not always be able to determine who installed the LP-gas piping system. However, additional clarification of this rule is outside the scope of this rulemaking; Commission staff plans to review this rule for a possible future rulemaking. The Commission has adopted the rule with two minor wording changes, one to correct the spelling of "unlicenced" to "unlicensed" in two places, and to delete the reference to "properly tagged the installation" because the tagging requirements have been deleted in adopted amendments to other rules.

Concerning §9.137, an individual commented that the new wording implies that the rule applies both to DOT and ASME vessels. Some vessels installed under or in hard places to get to on motor homes are almost impossible to inspect and it is hard to see all of the vessel for an inspection. The commenter stated that the dispensing person needs to see certain parts of the vessel for filling the vessel (ASME) and the rule needs to address this. This rule needs to define what items one needs to view in order to determine what is safe and when to refuse to fill, and state that the filler needs to make a good faith effort to inspect the vessel for defects in order to determine if it is safe or not to fill. Otherwise, the Commission will have a lot of unhappy motor home owners filing complaints and this would place a lot of liability on the LP-gas dealerships that are out of their control. The comment concluded that the rule needs to include language that states "obvious defects."

TPGA commented that the proposed changes to §9.137 add containers to the pre-fill cylinder inspection requirement which thus makes the rule applicable to ALL containers including ASME residential and motor/mobile fuel containers. In addition to the word "obvious" proposed in the rule, TPGA suggested adding "accessible and reasonable" because it is not plausible that an individual can access or inspect an entire container. TPGA also asked what warranted the proposed change to §9.137 to include all containers, and if there were incidents that justified the expansion in scope of this rule.

Another individual supported the addition of the words "accessible and reasonable" suggested by TPGA. Some motor/mobile fuel containers are mounted or situated in a fashion that does not allow full inspection.

In response to all three comments, the Commission agrees that it may not always be feasible for an individual to access or inspect an entire container, such as a motor/mobile fuel container installed under a vehicle or enclosed in a cowling. The Commission adopts the wording as follows to address those concerns and clarify the safety requirement: "In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2, before filling a container or cylinder, the individual filling the container or cylinder shall *conduct a visual inspection of the exposed, readily accessible areas of the container or cylinder* for any obvious defects. Where a container or cylinder is dented, bulged, gouged, or corroded such that the integrity of the container or cylinder is substantially reduced, the container or cylinder shall not be filled." Regarding TPGA's question as to why the change was proposed, the Commission notes that the proposal preamble stated: "In §9.137, the Commission proposes to change the word 'cylinder' in the rule title to 'container' to make the section more inclusive." The Commission notes that, while the LP-Gas Safety Rules did not previously require an inspection of ASME containers, the majority of licensees instruct employees to perform such an inspection prior to filling a container. The rule change is intended to make this "pre-fill inspection" practice standard for all licensees.

In §9.140, the Commission proposed some extensive amendments throughout the rule; however, the comments concerned only subsections (h) and (j). One individual commented that subsection (h) should be changed because forklift installations are normally at non-public places where only employees work. Because of fire marshal requirements to keep DOT cylinders outside, and because of the small amount of space, usually rented locations, and small amounts of storage (usually a few cylinders in a cylinder rack), the user is forced to place the cylinder rack outside on a loading dock in a cylinder cage. This does not create a safety hazard. This part of the rule needs to separate public and non-public places. This commenter pointed out that in the Houston area, many forklift users are in rows of warehouses where the only place to place these cylinder racks is outside on the loading platform, and concluded that Commission accident records do not support this new rule.

Another commenter stated that even though §9.140(h) sets forth uniform protection standards for protecting forklift racks, the commenter stated that forklift racks should be exempt from the uniform protection standards in this section. In subsection (h)(3)(A), the commenter recommended changing six-inch wheel stops to five-inch wheel stops, which are the industry standard. A six-inch wheel stop would be a custom order.)

TPGA also suggested that forklift racks should be exempt from the uniform protection standards in §9.140(h). TPGA states that cylinder cages were designed to protect the cylinders. Some TPGA members cited examples in which an 18-wheeler or other vehicle ran into the cylinder exchange cage and no leaks were caused. TPGA stated that there is consensus among its mem-

bers that cylinder exchange and forklift exchange need to be subject to different standards. There should be different standards for forklift cages, because there is less chance for an incident to occur because no members of the public are coming in or out. TPGA also suggested five-inch wheel stops instead of six-inch ones.

Regarding §9.140(j), the rule says if exceptional circumstances exist at the location of storage rack or self-service dispenser, at a later time, the Commission could require extra protection be installed. TPGA suggested striking this new wording from the rule and asked why it was proposed. TPGA stated that existing §9.28 covers such situations.

With regard to the general comments concerning §9.140(h), the Commission notes that this is not a new subsection. The proposed amendments were intended to provide a person installing a forklift cylinder rack or a 20-pound DOT cylinder rack with additional options for protecting the rack and cylinders from vehicular damage. The argument that forklift cylinders do not require protection against vehicular traffic is based on two cited examples in which an 18-wheeler or other vehicle collided with a forklift cylinder rack without incident; this does not justify removing the protection requirements for forklift cylinders in a storage rack located where it is subject to damage from vehicular traffic. In those two incidents, the Commission notes that there was no reported loss or product resulting in injury or property loss; however, safety rules are often violated without an injury or property loss occurring, yet the Commission does not consider eliminating the safety rules.

The Commission's current and proposed LP-Gas Safety Rules establish minimal safety measures for protecting 20-pound DOT portable cylinders and any size forklift cylinders in storage racks subject to damage from vehicular traffic. The Commission agrees that a cylinder rack may provide a protective envelope around cylinders in storage, but the Commission does not enforce a standard to which cylinders racks must be designed or constructed. As a result, the structural components and strength of cylinder racks may vary. In addition, the Commission does not have documentation that supports a determination that cylinder racks are designed or constructed for the purpose of protecting cylinders against vehicular damage. Cylinder racks are primarily intended to reduce the space requirements for cylinder storage, reduce the risk of cylinder theft, and, most importantly from a safety perspective, prevent tampering with valves on a cylinder, which may result in a hazardous situation. Historically, the Commission has required forklift cylinders to be stored in fenced areas, using Commission-approved cylinder racks (*i.e.*, non-combustible metallic construction, well ventilated, and protected against damage), or cylinder racks located against non-combustible buildings in protected, well-ventilated areas.

The Commission agrees with the comment that cylinder racks located in areas that are not open to the public often have limited traffic, which is under the control and direction of personnel owning or operating the facility. Cylinder racks stored in such areas may not require crash rail, guard post, or wheel stop protection if they are not exposed to damage from vehicular traffic. However, when storage racks used to store forklift cylinders or 20-pound cylinders are subject to vehicular damage, the Commission finds that it is not practical to exempt forklift cylinder racks from such protection, but to continue to require it for storage racks containing 20-pound cylinders.

The Commission therefore disagrees with the comments recommending the exemption of forklift cylinder storage racks from protection where such racks are subject to damage from vehicular traffic.

Regarding §9.140(h)(3), the Commission agrees with the commenters that a five-inch wheel stop is the industry standard and agrees that this is adequate for this rule; the Commission has adopted this change in subsection (h)(3). As further clarification, in subsection (h)(2)(A) and (B), the Commission clarifies that the February 1, 2008, effective date applies to new installations.

Regarding TPGA's comment regarding subsection (j) and the statement that §9.28 covers such situations, the Commission agrees that subsection (j) is not necessary, but not for that reason. The Commission notes that existing subsection (f), for which the Commission proposed no changes, includes nearly identical wording to the proposed new subsection (j). Therefore, the Commission does not adopt subsection (j) because subsection (f) already applies to such installations.

Regarding §9.143, one commenter requested clarification regarding the location of the sign in subsection (e). Current rules permit a licensee to have two sets of ESVs. The rule does not address at which set of ESVs the sign should be located. The rule also needs to address the ones at the bulkhead as this is the transfer location. This commenter also stated that subsection (h) needs to have a definite date when the new guardpost requirements take place. The Commission rules for years have required guardposts, so to avoid future enforcement problems, the rule needs some wording that all guardposts installed after February 1, 2008, must comply with this new wording.

TPGA commented that the proposed new wording in §9.143 regarding use of API 607 ball valves and back flow check valves may need clarification, along with the reference to NFPA 58, §5.7.4.2, in the Table in §9.403. Specifically, the Commission's proposed changes in §5.7.4.2f stated that the valve "shall be pneumatically actuated and shall fail in the closed position." TPGA suggested that this wording should read: "shall be pneumatically actuated and normally closed type." The industry term is "normally closed," not "fail in the closed position," since the valve by design should be closed when not in use and the air applied to the actuator overrides the spring and forces the valve open, just like on an internal valve. If the actuator were to fail, the spring could be one of the reasons, and if the spring did fail, just like in an internal valve, it might fail open. So to use the term "fail in the closed position" could be challenged in a court of law.

The Commission adopts some changes to subsection (e) to clarify the time line for the various requirements. Subsection (e) is reorganized, but no additional requirements have been added. The subsection will read: "(e) In addition to NFPA 58, 5.7.4.2, as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements), ESVs, internal valves, and API 607 ball valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards) as follows: (1) Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV. Existing installations shall have complied by August 1, 2001. (2) Beginning September 1, 2005, for new installations, at least one clearly identified and easily accessible manually oper-

ated remote emergency shutoff device shall be located between 25 and 100 feet from the ESV at the bulkhead and in the path of egress from the ESV. API 607 ball valves installed after February 1, 2008, shall also meet the requirements of this section. (3) The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions."

With regard to the wording in §9.143(f), the Commission notes that the proposed language "shall fail in the closed position" is taken directly from the 2008 edition of NFPA 58, §5.7.4.2(I). The Commission has adopted NFPA 58, with certain differences, but retains this particular wording.

Regarding the proposed amendments to §§9.206, 9.307, and 9.308, TPGA expressed support for the amendments.

The Commission adopts §9.313 with minor changes in the table to add a title to the table and to delete wording in the heading of the third column referring to underlining and strike-outs; this wording is unnecessary.

One individual commented on §9.402 regarding vessels under 4.2-pound capacity. The commenter stated that the rule should address and clarify this "in this one place" so that the Commission can get rid of all other rules referring to the 4.2-pound capacity.

The Commission disagrees that a comprehensive rule addressing all references in NFPA 58 would be preferable to the specific entries on the table, and adopts the rule and table as proposed.

The Commission's adopted amendments to §§9.2, 9.7, 9.17, 9.35, 9.41, 9.101, 9.137, 9.140, 9.141, 9.143, 9.301, 9.313, 9.401, 9.402, 9.403, and new §§9.4 and 9.32 are substantively different from the current requirements. In §9.2, the Commission adopts a new definition for "leak grades" to classify LP-gas leaks based on the danger it poses to life and property, and adopts a new definition for "self-service dispenser" used by ultimate consumers or licensees. In the definition of "transfer system," the Commission adds pumps, compressors, and meters, and bulkheads as previously discussed in this preamble, to the list of equipment to clarify the term and eliminate confusion caused by references to material handling equipment and dispensing system. The Commission broadens the definition of "ultimate consumer" to change "individual" to "person," as defined in §9.2, to include business and governmental entities.

New §9.4 addresses record keeping and enforcement issues. This section requires LP-gas licensees and registrants to retain certain documents for a specified time, and upon Commission request, make documents available for review and provide copies of documents. New subsection (b) would require the Safety Division formulate a plan or program for the periodic evaluation of LP-gas facilities and clarifies the scope of activities permitted for an authorized representative of the Commission. New subsection (d) clarifies the obligations of licensees and registrants in cooperating with the Commission in the administration and enforcement of this chapter. The Commission finds that the record keeping requirements in new §9.4 replace the tagging requirements for containers or installations as required currently in §§9.141, 9.206, 9.307, and 9.307; the Commission has eliminated the tagging requirement as discussed in this preamble.

In §9.7, the Commission adopts some clarifying wording in subsection (c) as previously discussed in this preamble. Other amendments delete the reference to LPG Form 26.

New wording in §9.17(a)(3) addresses situations in which an operations supervisor manages more than one outlet and each outlet has an assigned certified employee responsible for the outlet. A telephone number posted at the outlet with the responsible certified employee's and/or operations supervisor's telephone number provides important contact information for the public and representatives of the Commission seeking information about the operation of the outlet. That individual must monitor the telephone number and respond to calls during normal business hours.

The Commission adopts new §9.32 to address the legislative mandate requiring the Commission to adopt rules relating the notice requirement in HB 1170. The wording for the warning tag is specified in HB 1170.

The Commission adopts amendments to §9.35 to update a reference to a section in NFPA 58, and to clarify the leak grades defined by §9.2 and specify action criteria for responding to leaks. The new table provides some examples of the criteria.

In §9.41, the Commission adopts clarifying wording to require pressure tests to be performed by an LP-gas licensee, a master or journeyman plumber registered with the Commission, or if a school district employee performs the pressure test, that employee must be certified with the Commission. This requirement assures the Commission that school district personnel conducting pressure tests of systems at school facilities have passed an examination addressing applicable safety requirements.

The Commission changes the title of Subchapter B to "LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements" to better describe the rules included in that subchapter.

In §9.101(c)(1)(D), the Commission replaces "material handling equipment" with "transfer system" to use the more accurate, defined term. The Commission also specifies some items to be included on the site plan. Additionally, in §9.101(c)(1)(E), the Commission requires a copy of any permit required by the Texas Department of Transportation for transportation access to a public highway. In subsection (c)(2), a reference to a section in NFPA 58 is updated.

In §9.137, the Commission changes the word "cylinder" in the rule title to "container" to make the section more inclusive. Other amendments update section references in NFPA 58, and clarify that an individual filling a container or cylinder must examine the container or cylinder for obvious defects before filling it. The 2008 edition of NFPA 58 includes ASME containers, and the amendments make this section applicable to both ASME and DOT containers. As previously discussed in this preamble, the Commission has adopted some clarifying changes.

The Commission adopts several substantive amendments to §9.140. In subsections (a) and (b)(1), references to sections in NFPA 58 are updated; also in subsection (b)(1), the Commission adds wording to allow options for fencing material where fencing is required at LP-gas facilities. This change will allow fencing material providing protection equivalent to that of chain link fencing, such as industrial or wrought iron fencing, after approval by the Safety Division. Some clarifying wording is adopted in §9.140(b)(4) to require gate posts be installed at 45 degree angles to the corner of a bulkhead to reduce the risk of

transfer hoses binding on the gate posts in event of a pullaway incident. The change clarifies where gateposts are to be located in relation to a bulkhead. In §9.140(b)(5) and (7), references to "material handling equipment" are replaced with "the entire transfer system" for consistency.

Subsections (d), (d)(1), and (g) include changes to update the NFPA section references. In §9.140(d)(5), the Commission specifies a clearance requirement between a bulkhead and guard post to protect piping and transfer equipment against damage from vehicular traffic. Without a specific clearance, the opening between a bulkhead and a guard post may be large enough to allow a vehicle to enter the storage area and damage piping or transfer equipment.

In §9.140(g), the Commission updates NFPA 58 references, and in subsection (g)(5) adopts new wording to explain the new item 13 in Table 1; item 13 specifies signage requirements for outlets where a certified employee is responsible for the outlet. Amendments in subsection (g)(7) require licensees and non-licensees to comply with operational and/or procedural requirements specified by signage, such as extinguishing pilots, vacating vehicles, and not smoking. New (g)(8) clarifies requirements for the 24-hour emergency telephone number required by new item 12 in Table 1. The 24-hour emergency number must be monitored at all times and be answered by a person, not an answering machine or beeper device, who can provide LP-gas emergency response information or can immediately contact someone who can provide the information.

To prevent guard posts from being installed in contact with cylinder storage racks, the Commission adopts amendments in §9.140(h)(2)(A) and (B) to establish a minimum distance of 18 inches between a guard post and a cylinder storage rack, and to require guard posts to be securely anchored to a concrete driveway or concrete parking area. Amendments in §9.140(h)(3) clarify the options for protecting cylinder storage racks against damage from vehicular traffic when guard posts are not utilized. Instead of guard posts, concrete curbs or concrete wheel stops (adopted as five inches instead of six inches, as previously discussed in this preamble) may be used to provide protection if installed according to this section. The Commission adopts new subsection (h)(4) to require all parking wheel stops and cylinder storage racks to be secured against displacement.

The Commission adopts new §9.140(i) to provide specific requirements for protecting a self-service dispenser, as defined in §9.2, against vehicular damage. The provisions of this section provide options for protecting a self-service dispenser against damage from vehicles by allowing support columns, concrete barriers, bollards, and inverted u-shaped guard posts as protection instead of the guardrailing currently required in this chapter. However, additional safety measures apply when guardrailing is not utilized, for instance, the self-service dispenser must be equipped with a device to prevent the loss of gas in the event the dispenser is displaced, and the supply piping must be secured and installed in a manner to protect it against damage if the dispenser is displaced.

The Commission does not adopt proposed new subsection (j) as previously discussed in the preamble.

Amendments in §9.141(a), (b), (e), and (f) update existing NFPA references with references from the 2008 edition of NFPA 58. Section 9.141(c) clarifies the requirements for locking handles on ball valves by specifying that if ball-type shutoff valves two inches and larger that do not have locking handles, the main shutoff valves on stationary containers shall remain closed until a transfer hose is properly connected or disconnected. Section 9.141(i) is removed, which eliminates the requirement for attaching a decal or metal tag on a container to identify the installer. The requirement to place a tag or decal on a container with the installer's information did not enhance the safety aspects of the LP-gas installation. LP-gas installations without an installer's decal or tag are no less safe than installations with a decal or tag. Often, due to weathering or tampering a decal or tag that had been affixed to a container would become detached and be lost. The decal or tagging requirement provided the Commission with information for administering and enforcing the LP-gas safety rules. Currently, for non-residential installations, this information is obtained by the filing of a completion report with the Commission. For both residential and non-residential installations, the record keeping requirements in new §9.4 provide the Commission with needed information previously provided by a decal or tag.

The Commission adopts some substantive amendments in §9.143, including a deadline for certain equipment to be replaced. The Commission adds "API 607 Ball Valves" to the title of the rule; the 2008 edition of NFPA 58 allows the use of API 607 ball valves, utilizing an excess flow valve, in container openings that are not compatible with internal valves. Adding the use of this valve provides an option to the current safety rule requiring the installation of an excess flow valve, manual shutoff valve and an ESV when a container's opening is not compatible for installation of an internal valve. Other amendments in subsections (a), (b), (e), and (g) update NFPA references.

In §9.143(a), the Commission adopts wording to allow the use of API 607 ball valves and adds requirements for backflow check valves. Amendments in §9.143(a)(1) specify the location of a backflow check valve installed in the fixed piping at a bulkhead, and in subsection (a)(2)and (5) adds a reference to API 607 ball valves. The Commission clarifies in subsection (a)(3) the location of thermal elements required on ESV, internal valves, and API 607 ball valves. In §9.143(c), the Commission clarifies the use of ESV and backflow check valves at existing installations with horizontal bulkheads.

The Commission adopts amendments that all cable-actuated ESV be replaced with pneumatically-operated ESV by January 1, 2011. The Commission finds that this time period is reasonable because only about five percent of current LP-gas installations still use cable-actuated ESV. The rule already requires these to be replaced with pneumatically-operated ESV if any repair or maintenance is required.

In §9.143(e), the Commission adds a reference to the API 607 valves and clarifies the distance requirements for installation of remote emergency shutoffs. The Commission has adopted subsection (e) with some different formatting, as previously discussed in this preamble. Amendments in §9.143(i) specify requirements for locating remote emergency shutoff device when containers are filled through a filler valve installed directly in the tank instead of through a bulkhead.

The other substantive amendments the Commission adopts concern the adoption by reference of the 2006 edition of NFPA 54 and the 2008 edition of NFPA 58, effective February 1, 2008; these adoptions will establish consistent requirements for Texas LP-gas licensees and consumers with most other states in the United States. Because NFPA 54 and NFPA 58 have been adopted in whole or in part by most other states in the United States, the Texas LP-gas industry benefit from

these adoptions because Texas companies would be held to the same standards when doing business in other states; therefore, LP-gas companies wishing to expand their businesses to other states would have a better opportunity to do so.

The Commission adopts the 2006 edition of NFPA 54 to update the 1999 edition of NFPA 54 previously adopted. The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. In other words, if other LP-gas activities are to be performed by a licensee and those activities are included in an NFPA publication referenced in NFPA 54, then the licensee shall perform those activities in compliance with the referenced document. The amendments in §9.301 update the NFPA publications and edition dates. The Commission adopts amendments in §9.313 to specify some sections in NFPA 54 for which the Commission adopts additional language and one section that the Commission does not adopt; these sections are indicated in the new table in §9.313, which the Commission adopts with a change as previously discussed in the preamble.

The Commission adopts the 2008 edition of NFPA 58 in §9.401, with certain clarifications described in §9.402 and §9.403. The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58 which apply to LP-gas activities only. In other words, if other LP-gas activities are to be performed by a licensee and those activities are included in an NFPA publication referenced in NFPA 58, then the licensee shall perform those activities in compliance with the referenced document. For example, §6.22.22 of NFPA 58 refers to another NFPA publication, NFPA 70, National Electrical Code . Licensees who will be performing LP-gas activities authorized in §6.22.22 shall also be required to purchase that NFPA publication and perform the work to those standards.

Similar to the adoption by reference of the 2001 edition of NFPA 58, there are some sections in the 2008 edition of NFPA 58 for which the Commission adopts alternative or additional language, or which the Commission does not adopt; these sections are indicated in the table in §9.403. Most of the changes from the 2001 edition of NFPA 58 concern section number changes, but two sections are somewhat substantively different from the previously adopted requirement. In NFPA 58, §2.3.3.2(b)(2) changed to §5.7.4.2 and includes paragraph (e) allowing only one bushing to be used for reducing the size of a container opening and paragraph (f) allowing the use of API 607 ball valves in container openings that are not compatible with internal valves. Also, §8.2.3(l) requiring special provisions for the use of overfilling prevention devices on engine fuel containers when the container's fixed liquid level gauge is not used during filling has been removed and the Commission adopts the provisions of §11.4.1.15 in the 2008 edition of NFPA 48 as a whole. Other changes are nonsubstantive; many of these are changes to NFPA 58 references to containers of less than one gallon, which are exempted by Chapter 113 of the Texas Natural Resources Code.

Some of the provisions in NFPA 58 are different from what is currently in the LP-Gas Safety Rules or the 2001 edition of NFPA 58. For example, current Commission §9.403, in the reference to NFPA 58 §8.2.3(1), requires venting of gas through a fixed liquid level gauge on engine fuel containers equipped with an overfilling device unless specific provisions are followed. However, NFPA 58 §11.4.1.15 does not require venting of gas through a fixed maximum liquid level gauge during filling if an engine fuel container is equipped with an overfilling device.

Other adopted amendments in §§9.3, 9.27, 9.28, 9.129, 9.130, 9.134, 9.206, 9.208, 9.307, and 9.308 are somewhat substantive, but should not have a major effect. In §9.3, the Commission deletes references to LPG Form 26, which is no longer necessary. The Commission clarifies in §9.27 the reference to a non-stationary site, which is not a defined term, to "motor or mobile fuel installation." In §9.28, the Commission deletes the word "stationary" so that the reasonable safety provisions in this rule apply to any LP-gas installation covered by Chapter 9. In §9.129, the Commission adopts new subsection (e)(12) - (14) to conform with NFPA 58 §5.2.8.3(c); as discussed previously in this preamble, §9.129(e)(12) is adopted with a minor change. The Commission adopts new wording in §9.130 to require clear photographs of specific areas on a container. The Commission deletes the use of sketches because they were often unclear or unreadable. In §9.134, the Commission clarifies who is authorized to install piping by adding registrants authorized by §9.13 of this chapter, or individuals exempted from licensing as authorized by Texas Natural Resources Code, §113.081; as previously discussed in this preamble, §9.134 is adopted with minor changes. In §§9.206, 9.307, and 9.308, the Commission deletes the requirement for tagging containers and piping, and updates NFPA 58 references. The Commission clarifies in §9.208 who is authorized to perform testing on transport containers by adding individuals authorized by the United States Department of Transportation to conduct such tests. In §9.308, the Commission adds wording that documentation of pressure and leakage testing be retained by registrants and licensees, as specified in new §9.4.

Finally, amendments in §§9.1, 9.7, 9.21, and 9.37 are nonsubstantive and are made for clarification. The amendment in §9.1 corrects a cross-reference to Chapter 9; the adopted language added in §9.7 clarifies existing requirements. The change in §9.21 refers to information the Commission obtains from the Comptroller's office, which is no longer necessary for licensees to provide. The Commission's adopted amendment in §9.37 includes a change from the proposal, as discussed previously in this preamble. Sections for which the only adopted amendments are updates to NFPA 58 sections include §§9.114, 9.131, 9.135, 9.136, 9.142, 9.211, 9.302, 9.303, 9.306, 9.311, and 9.312.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.1 - 9.4, 9.7, 9.17, 9.21, 9.27, 9.28, 9.32, 9.35, 9.37, 9.41

The amendments and new rules are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the adopted amendments and new rules.

Issued in Austin, Texas, on December 18, 2007.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(2) AFRED--The Commission's Alternative Fuels Research and Education Division.

(3) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(4) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(5) Applicant--An individual:

(A) who is applying for a new certificate; or

(B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.

(6) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(7) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(8) Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(9) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee; or

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title (relating to Training and Continuing Education Courses); or

(C) who has passed the required employee-level qualification examination, has paid the applicable fee, and is required to comply with a training requirement as specified in §9.52 of this title (relating to Training and Continuing Education Courses); or

(D) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(E) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(10) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(11) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(12) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(13) Commission--The Railroad Commission of Texas.

(14) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(15) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(16) Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(17) DOT--The United States Department of Transportation.

(18) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(19) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(20) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(21) Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(22) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(23) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(24) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(25) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(26) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(28) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(29) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(30) MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(31) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(32) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(33) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(34) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(35) Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(36) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(37) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(38) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(39) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(40) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(41) Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(42) Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(43) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(44) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(45) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(46) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(47) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(48) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(49) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(50) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(51) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(52) Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(53) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in dispensing LP-gas between containers.

(54) Transport--Any bobtail or semitrailer equipped with one or more containers.

(55) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(56) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(57) Ultimate consumer--The person controlling LP-gas immediately prior to its ignition.

§9.7. Application for License and License Renewal Requirements.

(a) No person shall perform work, directly supervise LP-gas activities, or be employed in any capacity requiring contact with LP-gas unless:

(1) that individual has taken and passed any applicable rules examination specified in §9.10 of this title (relating to Rules Examination) and in §9.17 of this title (relating to Designation and

Responsibilities of Company Representatives and Operations Supervisors);

(2) the individual is in compliance with the training and continuing education requirements beginning in §9.51 of this title (relating to General Requirements for Training and Continuing Education), except for a trainee described in §9.12 of this title (relating to Trainees);

(3) prior to performing authorized LP-gas activities in Texas, the individual is employed by a licensee or by a license-exempt entity, such as a political subdivision or a state agency; or

(4) the individual holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption) and is therefore exempt from the requirements of this subsection.

(b) A person exempt from licensing as authorized by Texas Natural Resources Code, §113.081(b), shall not engage in any LP-gas activities in commerce or in business without first obtaining a license.

(c) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided in §113.081(g) if the entity is performing work for itself on its own behalf, but is required to be licensed to perform work for or on behalf of a second party.

(d) Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and certification cards for employees at that location available for inspection during regular business hours. In addition, licensees shall maintain a current version of the LP-Gas Safety Rules and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(e) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(f) An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section):

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

(A) LPG Form 1A if the applicant will establish any outlets;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name;

(D) LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply with §9.26 of this title (relating to Insurance Requirements);

(E) LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the applicant shall also comply with §9.26; and/or

(F) LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;

(3) pay the following fees:

(A) the applicable license fee specified in §9.6 of this title (relating to Licenses and Fees);

(B) transport registration fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units), if the applicant for license intends to operate a transport or container delivery unit; and

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) An applicant for license shall not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, until it has employed a company representative and/or operations supervisor who has passed the management-level rules examination specified in §9.10 of this title (relating to Rules Examination) with a score of at least 75% and who has completed any required training in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses), or who has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption). Company representatives and operations supervisors shall also comply with §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(h) For license renewals, the Section shall notify the licensee in writing at the address on file with the Section of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, and 7, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to

1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(i) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section for each of its outlets legible copies of:

(A) its current Department of Transportation (DOT) authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or

(B) its current American Society of Mechanical Engineers (ASME) Code, Section VIII certificate of authorization.

(2) An applicant for a Category B or O license or renewal shall file with the Section a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.35. Written Procedure for LP-Gas Leaks.

(a) In addition to NFPA 58 §14.4.9.1, each licensee shall maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee shall ensure that all employees are familiar with the procedure and shall authorize employees to implement the procedure without management oversight. The written procedure shall be available to emergency response agencies as specified in NFPA 58, §6.25.2 and as stated in Table 1 of §9.403 of this title, (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

(b) The written procedures shall include the classification of the leak grade as defined in §9.2 of this title (relating to Definitions).

(c) The procedures shall include the appropriate action criteria for the classification of leak determined according to the table in this section. The examples of leak conditions are provided as guidelines and are not exclusive. The judgment of the company personnel at the scene is of primary importance in determining the grade assigned to a leak.

Figure: 16 TAC §9.35(c)

§9.37. Termination of LP-Gas Service.

(a) If the Safety Division (the Division) determines that any LP-gas container or installation constitutes an immediate danger to the public health, safety, and welfare, the Division shall require the immediate removal of liquid and vapor LP-gas and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include appliances, equipment, or any part of the system including the servicing container. A warning tag shall be installed by the Division until the unsafe condition is remedied. Once the unsafe condition is corrected, the tag may be removed if authorized by the Division.

(b) If the Division determines that any LP-gas container or installation does not comply with the Texas Natural Resources Code, Chapter 113, or the LP-Gas Safety Rules, but does not constitute an immediate danger to the public health, safety, and welfare, the Division shall take action to ensure that the container or installation comes into compliance as soon as practicable. Division action may include the placement of a warning tag. Once the container or installation complies with Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, the Division may remove or delegate the removal of the warning tag.

(c) If the affected entity disagrees with the removal from service and/or placement of a warning tag, the entity may request a review of the Division's decision within 10 calendar days. The Division shall notify such entity of its finding, in writing, stating the deficiencies, within 10 business days. If the entity disagrees, the entity may request or the Division on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered by the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.101, 9.114, 9.129 - 9.131, 9.134 - 9.137, 9.140 - 9.143

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the adopted amendments and new rules.

Issued in Austin, Texas, on December 18, 2007.

§9.129. Manufacturer's Nameplate and Markings on ASME Containers.

(a) LP-gas shall not be introduced into an ASME container unless the container is equipped with an original nameplate or at least one of the nameplates defined in this subsection permanently attached to the container.

(1) Commission identification nameplate--A nameplate issued under the procedures specified in §9.130 of this title (relating to Commission Identification Nameplates) and attached by an authorized representative of the Railroad Commission for the purpose of identifying an ASME stationary container when the original nameplate is lost or illegible.

(2) Duplicate nameplate--An additional ASME container nameplate issued by the original manufacturer with duplicate information as the original nameplate and clearly marked as a duplicate nameplate, but installed in a remote location.

(3) Modification (or alteration) nameplate--A nameplate issued and affixed by an ASME Code facility including only partial information applicable to a modification or alteration performed on that container.

(4) Replacement nameplate--A nameplate including the identical information as the original nameplate and identified as a replacement nameplate, but issued and affixed by the original manufacturer or its successor company or companies when the original nameplate is lost or illegible.

(b) Nameplate thickness for stainless steel nameplates issued on or after September 1, 1984, shall be sufficient to resist distortion due to the application of markings and fusion welding.

(c) Nameplates shall be attached in a location that will remain visible after installation of the containers.

(d) Nameplates on containers built prior to September 1, 1984, shall include at least the following legible information:

(1) the name of container manufacturer;

(2) the manufacturer's serial number;

(3) the container's working pressure; and

(4) the container's water capacity.

(e) Nameplates on containers built on or after September 1, 1984, shall be stainless steel and permanently attached to the container by continuous fusion welding around the perimeter of the nameplate, and shall be stamped or etched with the following information in characters at least 5/32 inch high:

(1) service for which the container is designed (underground, aboveground, or both);

(2) name and address of container supplier or trade name of container;

(3) water capacity of container in pounds or U.S. gallons;

(4) design pressure in pounds per square inch;

(5) the wording "This container shall not contain a product that has a vapor pressure in excess of _____ psi at 100 degrees F";

(6) outside surface area in square feet;

(7) year of manufacture;

(8) shell thickness and head thickness;

(9) overall length of the container, the outside diameter of the container, and dish radius of the heads;

(10) manufacturer's serial number;

(11) ASME Code symbol;

(12) minimum design metal temperature _____ F degrees at MAWP _____ psi;

(13) type of construction "W"; and

(14) degree of radiography "RT-_____".

(f) Any replacement nameplate issued by an original container manufacturer for containers constructed prior to September 1, 1984, shall be stainless steel and shall be affixed in accordance with ASME Code. The owner or operator of the container shall ensure that a copy of LPG Form 8 is filed with the Safety Division (the Division) when a replacement nameplate is affixed.

(g) Nameplates on LP-gas motor or mobile fuel tanks shall be permanently attached in a manner which will minimize corrosion of the nameplate or its fastening means and not contribute to corrosion of the container. If the nameplate is not continuously welded to the container, then it shall be raised at least 1/4 inch but no more than 1/2 inch from the container's surface.

(h) In addition to a container nameplate, underground containers shall have a system nameplate permanently attached to the system in a location that will be readily accessible for inspection when the containers are buried. Where the container is buried, mounded, insulated, or otherwise covered so the nameplate is obscured, a duplicate nameplate shall be installed in a clearly visible and accessible location.

(i) The Division may remove a container from LP-gas service or require ASME acceptance of a container at any time if the Division determines that the nameplate, in any form defined in subsection (a)(1) - (4) of this section, is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way and does not contain at a minimum the items defined in subsection (d) of this section.

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources Code, §113.081. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to

make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicensed person who installed the LP-gas piping.

§9.137. Inspection of Containers at Each Filling.

In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2 before filling a container or cylinder, the individual filling the container or cylinder shall conduct a visual inspection of the exposed, readily accessible areas of the container or cylinder for any obvious defects. Where the container or cylinder is dented, bulged, gouged, or corroded such that the integrity of the container or cylinder is substantially reduced, such container or cylinder shall not be filled.

§9.140. Uniform Protection Standards.

(a) In addition to NFPA 58 §6.24.3.14, LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guard railing requirements in subsections (b) and (d) of this section. The fencing and guard railing requirements also do not apply to the following:

(1) LP-gas systems and containers located at private residences;

(2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;

(3) LP-gas piping which contains no valves and which complies with all other applicable *LP-Gas Safety Rules*; and

(4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

(b) In addition to NFPA 58, §§6.18.4.2, 6.19.3.2, 6.24.3.7, 7.2.3.8, 8.2.1.1, and 8.4.2.1. fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size, or industrial-type fencing, or material providing equivalent protection as determined by the Safety Division.

(2) Fencing shall be at least six feet in height at all points.

(3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material.

(4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. Gate posts on gates installed directly in front of the bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead. There shall be at least two means of emergency access from the fenced enclosure. If guard service is provided, it shall be extended to the LP-gas installation. Guard service shall be properly trained as set forth in §9.51(b)(4) of this title (relating to General Requirements for Training and Continuing Education). However, if a fenced area is not larger than 100 square feet in area, the point of transfer is within three feet of a gate, and any containers being filled are not located within the enclosure, a second gate shall not be required.

(5) Clearance of at least three feet shall be maintained between the fencing and the container and the entire transfer system.

(6) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container shall be designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (d) of this section.

(7) The operating end of a container, including the entire transfer system, shall be completely enclosed by fencing.

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by the Safety Division (the Division) as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

(2) DOT portable or forklift containers in storage racks or at single family dwellings used as private residences; and

(3) DOT portable or forklift containers that have been used in LP-gas service but are not awaiting use or resale.

(d) In addition to NFPA 58, §§6.6.1.2, 6.6.6.1(a) - (d), 6.6.6.2(6), 6.18.4.2, 6.24.3.12, and 8.4.2, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) In addition to NFPA 58 §6.18.4.2(c), where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas, and guardrailing specified in paragraphs (2) - (6) of this subsection, or protection considered by the Division to be equivalent, shall be required.

(2) Vertical supports for guardrails shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost; anchored in concrete at least 18 inches below the ground; and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(3) The top of the horizontal guardrailing shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrailing shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrailing shall be capped on the ends or otherwise protected to prevent the entrance of water or debris into the guardpost; and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions, including the nature of the traffic to which the protected equipment is subjected.

(4) Openings in horizontal guardrailing, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailing. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailing.

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects

a bulkhead shall be located a minimum of 24 and a maximum of 36 inches at 45-degree angles to the nearest corner of the bulkhead.

(6) The operating end of the container and any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage. The protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(e) A combination of fencing and guardrails specified in subsections (b) and (d) of this section shall not result in less protection than using either fencing or guardrails alone.

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrailing, then the licensee or operator shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

(g) In addition to NFPA 58 §5.2.8.1, LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.
Figure: 16 TAC §9.140(g)

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) Items 1, 2, and 3 in Table 1 may be combined on one sign.

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(5) Item 13 in the column entitled "Requirements" in Table 1 applies to outlets where an LP-gas certified employee is responsible for the LP-gas activities at that outlet, when a licensee's employee is the operations supervisor at more than one outlet as required by §9.17(a) of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(6) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(7) Licensees and non-licensees shall comply with operational and/or procedural actions specified by the signage requirements of this section.

(8) Any 24-hour emergency telephone numbers shall be:

(A) monitored at all times; and

(B) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.

(h) Storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (d) of this section; or

(2) installing guard posts, provided:

(A) effective February 1, 2008, for new installations, the guard posts are installed a minimum of 18 inches from each storage rack and consist of at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, no more than four feet apart, and anchored in concrete at least 30 inches below ground and rising at least 30 inches above the ground; or

(B) effective February 1, 2008, for new installations, the guard posts are installed a minimum of 18 inches from each storage rack and are constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The guard posts and steel plate shall be permanently installed and securely anchored to a concrete driveway or concrete parking area.

(3) Guardrail or guard posts are not required to be installed if:

(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop;

(4) All parking wheel stops and cylinder storage racks in paragraph (3) of this subsection must be secured against displacement.

(i) Self-service dispensers shall be protected against vehicular damage by:

(1) guardrails that comply with subsection (d)(2) - (6) of this section; or

(2) guard posts that comply with subsection (d)(2) of this section; or

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to the Safety Division, provided:

(A) such protection extends beyond the framework of the dispenser; and

(B) at least 24 inches of clearance is maintained between the approach end of the dispenser and the protective barrier.

(4) Self-service dispensers utilizing protection specified in paragraphs (2)-(3) of this subsection shall be connected to supply piping by a device designed to prevent the loss of LP-gas in the event the dispenser is displaced. The device must retain liquid on both sides of the breakaway point and be installed in a manner to protect the supply piping against damage.

§9.143. Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §6.6.12, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead, and for all container openings 1 1/4 inches or greater, pneumatically-operated emergency shutoff valves (ESV), pneumatically-operated internal valves, or pneumatically-operated API 607 ball valves as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes or Additional Requirements for NFPA 58, §6.11.1. In lieu of a pneumatically-operated internal valve or a pneumatically-operated ESV, a backflow check valve may be installed where the flow is in one direction into the container. The backflow check valve shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with combustible material, and shall be designed for this specific application.

(1) The pneumatic ESV and/or backflow check valves shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESV shall be installed in the piping so that any break resulting from a pull away will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the internal valves, ESV, and API 607 ball valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Pneumatically-operated ESV, internal valves, and API 607 ball valves shall be equipped for automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the ESV, internal valves, and/or API 607 ball valves. Temperature sensitive elements shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-operated internal valves, ESV, and API 607 ball valves shall be interconnected and incorporated into at least one remote operating system.

(b) In addition to NFPA 58 §5.9.6, within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead, ESV, and/or backflow check valves where the flow is in one direction into the container shall install vertical bulkheads, pneumatic ESV and/or backflow check valves where the flow is in one direction into the container.

(c) Existing installations which have horizontal bulkheads and cable-actuated ESV shall comply with the following:

(1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;

(2) If a cable-actuated ESV requires replacement, it shall be replaced with a pneumatically-operated ESV;

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatically-operated ESV;

(4) All cable-actuated ESV shall be replaced with pneumatically-operated ESV by January 1, 2011.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping;

(2) No more than two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pull away;

(3) Both liquid and vapor transfer hoses shall be plugged or capped;

(4) Bulkheads shall be located at least 10 feet from any aboveground container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed aboveground on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Safety Division (the Division) in writing and include all necessary information. The Division may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) Horizontal bulkheads shall not be converted to vertical bulkheads;

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway;

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.

Figure: 16 TAC §9.143(d)(7) (No change.)

(A) Six-inch steel channel iron shall be used;

(B) Legs shall be four-inch schedule 80 piping;

(C) The top crossmember of a vertical bulkhead shall be six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway;

(D) The kick plate shall be at least 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(i) Pipe sleeves shall have a clearance of 1/4 inch or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12-inch schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(ii) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12-inch length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12-inch nipple or a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the LP-Gas Safety Rules. The swivel-type piping may also be used for unloading, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) The Division may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §5.7.4.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements), ESVs, internal valves, and API 607 ball valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards) as follows:

(1) Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV. Existing installations shall have complied by August 1, 2001.

(2) Beginning September 1, 2005, for new installations, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the ESV at the bulkhead and in the path of egress from the ESV. API 607 ball valves installed after February 1, 2008, shall also meet the requirements of this section.

(3) The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*. If the bulkheads, internal valves, backflow check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) In addition to NFPA 58 §§5.9.6 and 6.9.6.1, by February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall have been replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 60 inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, the Division may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container; and

(2) at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the point of transfer in the path of egress to close the primary discharge valves in the containers; and

(3) the LP-gas installation is not used to fill an LP-gas transport.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Managing Director
Railroad Commission of Texas
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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.206, 9.208, 9.211

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the adopted amendments and new rules.

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.301 - 9.303, 9.306 - 9.308, 9.311 - 9.313

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the adopted amendments and new rules.

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§9.313. Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 54 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter.
Figure: 16 TAC §9.313

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §§9.401 - 9.403

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the adopted amendments and new rules.

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CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.8, 9.10 - 9.12, 9.51, 9.52, 9.54

The Railroad Commission of Texas adopts amendments to §§9.8, 9.10 - 9.12, 9.51, 9.52, and 9.54, relating to Application for a New Certificate; Rules Examination; Previously Certified Individuals; Trainees; General Requirements for Training and Continuing Education; Training and Continuing Education Courses; and Commission-Approved Outside Instructors, without changes from the versions published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7825).

The Commission adopts the amendments to update and clarify certain LP-gas training and continuing-education requirements. For all of the rules in this adoption, the Commission specifies an effective date of February 1, 2008.

The Commission received three comments, two from individuals and one from the Texas Propane Gas Association (TPGA). The Commission appreciates these comments.

With respect to §9.10(a)(6), TPGA commented that the proposed time limit of three hours for the Category E management- level examination is too short and suggested a limit of five hours for that examination. The Commission adopts the amendment without change to the proposal. Since September 2005, the Commission has administered 94 Category E management-level examinations. All of these examinees finished the examination within three hours.

With respect to §9.10(a)(7), one individual expressed strong support for the proposal to offer employee-level LP-gas transport

driver, DOT cylinder filling, and motor/mobile fuel dispensing examinations in either Spanish or English. The comment stated that Spanish is becoming more necessary due to the changing demographics in Texas. TPGA did not support this proposal. TPGA stated that the LP-gas codes are printed in English, and persons who do not take the exam in English may not have a proper understanding of the rules and may not be able to communicate important safety messages to customers.

The Commission adopts the amendment without change to the proposal. Previous editions of NFPA 54 and NFPA 58 are available in Spanish. NFPA 54 is not at issue, since none of its standards apply to the LP-gas transport driver, DOT cylinder filling and motor/mobile fuel dispensing examinations. The 2008 edition of NFPA 58 is not currently available in Spanish; however, before offering the two new examinations in Spanish, the Commission will publish a study guide in Spanish for each examination that will include all pertinent sections of the standards and the *LP-Gas Safety Rules*. With respect to TPGA's comments on understanding the rules and communicating safety information to customers, the Commission has seen no evidence that persons who took the current transport driver examination in Spanish during the 20 years it has been offered understood the rules any less well than persons who took the same examination in English, or that persons who pass an examination in Spanish are less capable than persons who pass the same examination in English of communicating safety messages to customers who speak their respective languages. The Commission takes no position on this matter and believes that decisions about which employees are assigned responsibility to communicate safety messages to customers are best left up to individual licensees.

TPGA expressed support for the proposals in §9.51 to eliminate obsolete deadlines and update the titles of the Propane Education and Research Council's Certified Employee Training Program (CETP) listed in Tables 3 and 4. The Commission adopts these amendments without changes.

Two CETP-related comments addressed certification and training generally rather than specific proposed amendments. One commenter stated that AFRED's training and certification programs do not capitalize on the experience and knowledge available from the LP- gas industry nationally through the Propane Education and Research Council's Safety and Training Advisory Committee (STAC), in particular the Certified Employee Training Program (CETP). The commenter stated that propane industry employees in Texas are therefore unable to benefit from the standardized CETP training and certification program, which is created and maintained by national industry leaders. The commenter noted that the Commission currently allows CETP courses to count for LP-gas continuing-education credit, but stated that it would be most beneficial for the Commission to adopt CETP as an alternative primary training tool for propane-industry employees. TPGA also noted that CETP is available for Railroad Commission continuing-education credit. TPGA expressed support for continuing the Commission's LP-gas training and certification program, but would like to see CETP adopted as an alternative means of certification. The comment stated that having CETP certification and training available as an alternative to Railroad Commission certification and training would offer flexibility and efficiency for some propane businesses that have a large staff and employ in-house trainers.

The Commission disagrees with the first part of the individual's comment. The Commission's LP-gas training program has benefited greatly from the industry expertise represented in STAC and CETP. The director of the Commission's LP-gas training program, Thomas Petru, is a nationally recognized expert on LP-gas safety who has served on STAC since its creation in January 2002. As a STAC member, Mr. Petru helped write CETP, and his service on STAC has helped to ensure that the Commission's training materials are up to date and reflect current industry best practices.

The Commission agrees with both comments on the value of CETP. While adoption of CETP as an alternative method of fulfilling the Commission's certification and training requirements is outside the scope of the current rulemaking, the Commission recognizes that CETP is an equivalent program for employee-level training, and staff plans to recommend that the Commission consider extending the options of CETP to include both training and continuing education, along with some possible computer-based CETP training, in a future rulemaking.

In §9.8, the Commission adopts a non-substantive change to clarify that the courses named in §9.51 or §9.52 may or may not include Advanced Field Training (AFT) activities.

In §§9.10, 9.51, and 9.52, the Commission adds statements that, in addition to complying with NFPA 58, §§4.4 and 11.2, licensees and certified individuals must also comply with the Commission's training and continuing education rules.

In §9.10(a), the Commission adopts new paragraph (6) concerning time limits for examinations. The time limits, which will begin June 1, 2008, will require an applicant to complete a qualifying examination within two hours or three hours, depending on the examination. Category E management-level examinations and employee-level examinations for bobtail drivers and service and installation technicians will be limited to three hours from the time the examination begins; all other examinations will be limited to two hours from the time the examination begins. The examination proctor will be the official timekeeper. Examinees will be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor will mark any answer sheet that was not completed within the time limit.

The time limits will not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and will remain so; employee-level examinations are currently open book, and will remain so.

The Commission adopts these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program. This program is a substantial undertaking. In fiscal 2006 and 2007, AFRED staff administered a total of 6,586 qualifying examinations, of which 6,022 (91 percent) were open- book, employee-level examinations that are unlimited as to time. It is not unusual for examinees to arrive unprepared and spend an entire day of their and their employers' time researching the answers to a 50-question test. In addition, 3,876 of these qualifying examinations (59 percent) were administered outside Austin, often following an eight-hour training class, at donated or public facilities. The Commission's expectation is that the managers of some of these facilities who are not willing to let the Commission use their building to give open-ended examinations after hours may be willing to let AFRED do so with a guarantee that the examinations will end at a reasonable hour. In such cases, the examinee, his or her employer, and AFRED staff would all ben-

efit from not having to come back the next morning to take an examination.

The Commission considers the time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the LP-gas activities they authorize the examinee to perform. A three-hour time limit is adopted for the closed-book Category E management-level examination, which currently has 175 questions, and for the open-book employee-level bobtail driver and service and installation examinations, which currently have 75 questions. Two-hour time limits are adopted for all other closed-book management-level examinations, which currently have between 25 and 100 questions, and for all other open-book employee-level examinations, which currently have between 33 and 50 questions. The Commission will implement these time limits on June 1, 2008, by which date AFRED will have published detailed study guides that will enable applicants to prepare more adequately for all employee-level examinations and reduce or eliminate the need to spend time researching the answers to questions during the examination.

In new paragraph (7), the Commission adopts wording that employee-level LP-gas transport driver, DOT cylinder filling, and motor/mobile fuel dispensing examinations may be offered in either Spanish or English. This option, which is currently available only to employee-level LP-gas transport driver examinees, is adopted in response to requests from two LP-gas marketers to make the cylinder-filling and motor/mobile fuel dispensing examinations, which are very often taken together, available in Spanish.

In §9.10(b), the Commission adopts a name change for one examination and two new examinations. In paragraph (3), the engine fuel examination is changed to "On-Road Motor Fuel" examination, with other clarifying wording added. In paragraphs (4) and (5), new examinations for "Non-Road Motor Fuel" and "Mobile Fuel" clarify some distinctions between these activities and allow individuals to certify according to their actual job duties. In general, the On-Road Motor Fuel examination is intended to cover LP-gas activities related to highway vehicles such as cars, trucks and buses that are propelled by LP-gas. The Non-Road Motor Fuel examination is intended to cover LP-gas activities related to off-road equipment such as industrial forklifts and commercial mowers that are propelled by LP-gas, but whose fuel systems differ significantly from those used on highway vehicles. The Mobile Fuel examination is intended to cover LP-gas activities related to mobile LP-gas equipment such as appliances installed on a trailer, catering truck or mobile kitchen. In paragraph (8), the Commission adds stationary engines to the list of stationary LP-gas systems relative to which a Service and Installation examination qualifies an individual to perform LP-gas activities. This change clarifies which examination qualifies an individual to perform LP-gas activities related to stationary engines such as those that power generators and pumps. The Table in §9.10(b) is also amended to include these changes. The new employee-level non-road motor fuel and mobile fuel examinations will be available for employees of both Category E and Category L licensees. These three examinations are often the subject of questions to the Commission as to which examination an applicant needs to take, and the Commission finds that the changes will improve safety by offering examinations that better reflect the way that LP-gas motor fuel and mobile fuel activities are performed in actual industry practice.

The Commission adds wording in §9.11(a) to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired, and to delete §9.11(b) as redundant. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform LP-gas activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as adopted, the Commission will be informed of LP-gas certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

In §9.12, the Commission deletes the requirement that a licensee or ultimate consumer file LPG Form 16 for each trainee at the time the trainee begins supervised LP-gas activities. This filing requirement is no longer necessary.

In §9.51(b)(3)(E), a reference is added to the on-road motor fuel, non-road motor fuel, and mobile fuel certifications, which are added in §9.10.

Some non-substantive clarifying changes are adopted in §9.52(b)(1)(A) concerning some deadlines that have already passed. In subsection (h), the Commission adopts some changes to the Tables that list the LP-gas training and continuing education courses. The first table has no changes. In Table 2, the column entitled "Portable Cylinder Filling" is changed to "DOT Cylinder Filling." The word "Dispensing" is added in the column for "Motor & Mobile Fuel." The entire column for "Bobtail Service & Installation" and the accompanying footnote are deleted. This category of certification is no longer in use and has been replaced by separate bobtail and service and installation certifications. The "RV Technician" column is changed to "Recreational Vehicle." The revision date for this table is changed to February 2008.

Tables 3 and 4 include some changes to the CETP course numbers and titles; these changes match the current CETP course titles. No substantive changes are adopted in these two tables.

The Commission adds in §9.54(a)(1)(C) authorized Category I outside instructors to the list of outside instructors who may offer the applicable training and continuing education classes to Category F, G, I, and J management-level certificate holders and DOT cylinder filling and motor/mobile fuel dispenser applicants and employee-level certificate holders. References to Category I are also adopted in subsection (b)(2) and (j)(1).

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP- gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, Chapter 113, §113.051.

Issued in Austin, Texas, on December 18, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706418
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: February 1, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 475-1295

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16 TAC §9.32

The Railroad Commission of Texas adopts the repeal of §9.32, relating to LP-Gas Advisory Committee, without changes from the version published in the October 26, 2007, issue of the *Texas Register*. The Commission adopts the repeal because by the terms of the rule, the LP-gas advisory committee ceased to exist on August 31, 2006.

The Commission received no comments on the proposed repeal.

The Commission adopts the repeal under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

Statutory authority: Texas Natural Resources Code, §113.051, and Texas Government Code, Chapter 2110.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113, and Texas Government Code, Chapter 2110.

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This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)
SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §13.70, §13.73

The Railroad Commission of Texas adopts amendments to §13.70 and §13.73, relating to Examination Requirements and Renewals, and Employee Transfers, without changes to the versions published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7829).

The Commission adopts the amendments to establish reasonable time limits for qualifying examinations and to extend to ultimate consumers and public entities that hire previously certified individuals the same rules that apply to CNG licensees that hire previously certified individuals. The Commission adopts an effective date of February 1, 2008, for these amendments.

In §13.70(a), the Commission adopts new paragraph (6) concerning time limits for examinations. The time limits, which will begin June 1, 2008, will require an applicant to complete a qualifying examination within two hours from the time the examination begins. The examination proctor will be the official timekeeper. Examinees will be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor will mark any answer sheet that was not completed within the time limit.

The time limits will not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and will remain so. Employee-level examinations are currently open book, and will remain so.

The Commission adopts these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program.

The Commission considers the time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the CNG activities they authorize the examinee to perform. Open-book employee-level examinations currently have 50 questions; closed-book management-level examinations currently have either 50 or 100 questions. A two-hour time limit is adopted for all examinations, based on approximately 2 1/2 minutes per question for an open-book examination and approximately 1-1/4 to 2 1/2 minutes per question for a closed-book examination.

In §13.73, the Commission adds wording to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform CNG activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as adopted, the Commission will be informed of CNG certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §116.034(a), which authorizes the Commission to adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered under Chapter 116.

Statutory authority: Texas Natural Resources Code, §116.034(a).

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.034(a).

Issued in Austin, Texas, on December 18, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §14.2019, §14.2020

The Railroad Commission of Texas adopts amendments to §14.2019 and §14.2020, relating to Certification Requirements, and Employee Transfers, without changes to the versions published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7831).

The Commission adopts the amendments to establish reasonable time limits for qualifying examinations and to extend to ultimate consumers and public entities that hire previously certified individuals the same rules that apply to LNG licensees that hire previously certified individuals. The Commission adopts an effective date of February 1, 2008, for these amendments.

In §14.2019(a), the Commission adopts new paragraph (6) concerning time limits for examinations. The time limits, which will begin June 1, 2008, will require an applicant to complete a qualifying examination within two or three hours, depending on the length of the examination, from the time the examination begins. The examination proctor will be the official timekeeper. Examinees will be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor will mark any answer sheet that was not completed within the time limit.

The time limits will not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and will remain so; employee-level examinations are currently open book, and will remain so.

A three-hour time limit is adopted for the open-book employee-level LNG Delivery Truck Driver examination and for the closed-book management-level Category 35 Retail and Wholesale Dealers examination, which currently have 80 questions and 135 questions, respectively. A two-hour time limit is adopted for all other LNG examinations, which currently have from 40 to 60 questions (employee-level, open book) or 75 to 85 questions (management-level, closed book).

The Commission adopts these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program.

The Commission considers the time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the LNG activities they authorize the examinee to perform. The three-hour time limit for the open-book employee-level LNG Delivery Truck Driver examination and for the closed-book management-level Category 35 Retail and Wholesale Dealers examination would allow 2 1/4 minutes and 1 1/3 minutes per question, respectively. The two-hour time limit for all other examinations would allow 2 minutes per question for a 60-question examination and 3 minutes per question for a 40-question examination.

In §14.2020, the Commission adds wording to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform LNG activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as adopted, the Commission will be informed of LNG certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §116.034(a), which authorizes the Commission to adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered under Chapter 116.

Statutory authority: Texas Natural Resources Code, §116.034(a).

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.034(a).

Issued in Austin, Texas, on December 18, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: November 2, 2007
For further information, please call: (512) 475-1295

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS
DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.92

The Texas Racing Commission adopts an amendment to 16 TAC §303.92, Thoroughbred Rules. This adopted amendment to §303.92(c)(1)(B) allows the payment of Breeder's Awards on an accredited Texas-bred thoroughbred if the dam is accredited with the breed registry within the same calendar year of foaling the subject horse. The proposed amendment was published in the August 24, 2007, edition of the *Texas Register* (32 TexReg 5276). The Commission received no comments in response to the published notice. The amendment is adopted without change to the proposal as published.

The amendment is adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules relating to horse and greyhound racing, and §9.01, which provides that the breed registries' rules establishing qualifications of Texas-bred horses are subject to Commission approval.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706591
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 10, 2008
Proposal publication date: August 24, 2007
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER DD. INVESTIGATIVE REPORTS, SANCTIONS, AND RECORD REVIEWS

19 TAC §§97.1031, 97.1033, 97.1035, 97.1037

The Texas Education Agency (TEA) adopts amendments to §§97.1031, 97.1033, and 97.1035, concerning investigative reports and sanctions, and new §97.1037, concerning record review of certain decisions. The amendments to §§97.1031, 97.1033, and 97.1035 are adopted without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3440) and will not be republished. New §97.1037 is adopted with changes to the proposed text as published in the June 15, 2007, issue.

The existing sections define the procedures for on-site investigations and reports as required by Texas Education Code (TEC), §39.076, and procedures for accreditation sanctions under TEC, §39.131, resulting from such reports. The adopted amendments update and clarify these procedures. The adopted new rule establishes procedures for creating an administrative record for review by the State Office of Administrative Hearings (SOAH). The adopted rule actions reflect changes in the TEC, Chapter 39, required by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

TEC, §39.302, added by HB 1, requires that an opportunity for challenging the decision of the commissioner of education on certain accreditation sanctions be available in specified circumstances and provided by the SOAH. In addition to enacting new TEC, §39.302, HB 1 enacted numerous changes to the TEC, Chapter 39, requiring that existing rules be revised and updated.

Currently, the rules in 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Procedures for Investigative Reports and Sanctions, define the procedures for on-site investigations and reports as required by TEC, §39.076, and procedures for accreditation sanctions under TEC, §39.131, resulting from such reports. The rules provide for notice to any person whom the report finds to have committed a violation of law, rule, or policy, and provide for an informal review of such findings before they may become final.

The adopted revisions to 19 TAC Chapter 97, Subchapter DD, update and clarify existing rules in light of HB 1. In addition, a new rule is added establishing procedures for creating an administrative record for review by the SOAH under new TEC, §39.302. Specifically, the adopted revisions establish the following.

Section 97.1031, Preliminary Investigative Report, was amended by adding new language in subsection (a) to clarify that an academic accountability rating, a financial accountability rating, and a determination of adequate yearly progress are not considered findings resulting from an investigation under the TEC, Chapter 39, Subchapter D, and do not need to be presented in a preliminary investigative report. The adopted amendment addresses a rating or determination that may be lowered or changed as a result of such an investigation. No changes were made to this section since published as proposed.

Section 97.1033, Informal Review of Preliminary Investigative Report; Final Investigative Report, was amended in subsection (c) to clarify discussion of findings and/or acceptance of additional written information. Additional minor technical corrections were made throughout the section. No changes were made to this section since published as proposed.

Section 97.1035, Procedures for Accreditation Sanctions, was revised to reference new 19 TAC Chapter 97, Subchapter EE, Accreditation Status, Standards, and Sanctions. Existing subsections (a) - (c), which reference outdated TEC provisions, were deleted. Re-lettered subsections (a) - (d) address notification to the district, compliance with revisions in §97.1031 and §97.1033, and annual and quarterly review of sanctions and assignments of conservators or management teams. No changes were made to this section since published as proposed.

New 19 TAC §97.1037, Record Review of Certain Decisions, was added to establish procedures for creating an administrative record for review by the SOAH for certain decisions. This new rule as adopted applies only to: a notice relating to accreditation sanctions, an assignment of an accreditation status of Accredited-Warned or Accredited-Probation, an assignment of a board of managers, and a request for review of an over-allocation of funds from an open-enrollment charter school. The new rule also addresses the required notice, request for record review, preliminary matters, record review, final order, no request for record review, and other law.

In response to public comment, the language in 19 TAC §97.1037(a)(4) was revised to reflect that the section applies to a request for review of an over-allocation, as opposed to an audit recovery, from an open-enrollment charter school. Also, the TAC citation referencing the commissioner of education's determination to grant the request for review was updated.

The subchapter name was changed from "Procedures for Investigative Reports and Sanctions" to "Investigative Reports, Sanctions, and Record Reviews" to reflect the new provisions relating to record reviews of certain decisions.

The public comment period on the proposal began June 15, 2007, and ended July 15, 2007. The comment period was extended through August 20, 2007. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments and new section.

§97.1031, Preliminary Investigative Report

Comment. Concerning §97.1031(b)(3), a representative of Association of Charter Educators (ACE) requested a change to the deadline for requesting an informal review of the findings of a preliminary investigative report. The commenter recommended setting a deadline of not less than ten business or school days from the date of receipt of the preliminary investigative report.

Agency Response. The agency disagrees. The comment addresses rule language that was not included for change in the proposed amendment. In addition, it should be noted that the language currently in effect was adopted effective November 6, 2001, and has functioned as intended. See 26 TexReg 8820.

§97.1033, Informal Review of Preliminary Investigative Report; Final Investigative Report

Comment. Concerning §97.1033(a), a representative of the Association of Texas Professional Educators (ATPE) requested clarification whether failure to exhaust this administrative means of addressing a concern might waive or impair other valuable rights.

Agency Response. The agency cannot respond to this comment because it is not authorized to give legal advice through the rulemaking process. Further, the comment addresses rule language that was not included for change in the proposed amendment.

Comment. Concerning §97.1033(a), two attorneys requested clarification about the rights of "persons" as opposed to those of "districts," as used in the proposed rules implementing Texas Education Code (TEC), Chapter 39. The commenters added that the rules establish different procedures applicable to persons and districts.

Agency Response. The agency disagrees. In all instances, the current and proposed rules use the term "person" to include a district, and the term "district" to include a charter holder. The interpretation of the word "person," as found in TEC, §39.076, is governed by the Code Construction Act. That Act defines the term "person" as follows: "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. See Government Code, §311.005(2).

When the Legislature used the term "person" in TEC, Chapter 39, without assigning it a different meaning, it assigned the term the meaning found in the Code Construction Act.

No further definitional rule is required for the term "person" to acquire the meaning assigned by law. Nevertheless, since readability and ease of use is an important goal in the agency's rulemaking, 19 TAC Chapter 97, Subchapter EE, §97.1051, was modified to include a definition for "person." Clarification was also added to §97.1051 that the definitions found in that subchapter also apply to Chapter 97, Subchapter DD.

Comment. Concerning §97.1033(c), a representative of the ACE asked if all written information needs to be attached to the request for review. The commenter stated ten days is not sufficient time to submit written data to support the school's review request.

Agency Response. The agency disagrees. The comment addresses rule language that was not included for change in the proposed amendment. In addition, it should be noted that the language currently in effect was adopted effective November 6, 2001, and has functioned as intended. See 26 TexReg 8820.

Comment. Concerning §97.1033(f), two attorneys asked for clarification of the apparent ban on appeal of preliminary investigation reports. The commenter stated this does not seem consistent with other provisions of the proposed rules.

Agency Response. The agency disagrees. The comment addresses rule language that was not included for change in the proposed amendment. It should be noted that the language currently in effect was adopted effective November 6, 2001, and has functioned as intended. See 26 TexReg 8820. In addition, judicial case law governs the circumstances under which there may be a judicial cause of action for review of any agency decision. However, TEC, §7.057(a)(1), does not provide for the appeal of an investigation report issued under TEC, §39.076(b). That section provides a forum for persons "aggrieved by . . . the school laws of this state," which are defined as Titles 1 and 2 of the TEC and rules adopted under those statutes. See TEC, §7.057(f)(2). An investigative report is not a school law of this state, and is not governed by TEC, §7.057(a)(1). TEC, §39.076(b), requires the findings from an investigation authorized by TEC, Chapter 39, Subchapter D, to be presented in preliminary form before being finally released. This informal review enables the agency to correct any errors before releasing its final report. An informal review is not an adjudicative hearing, and so the Administrative Procedure Act does not apply to it. See Government Code, §2001.003(1). Section 97.1033 provides for the procedural elements that are necessary and conducive to insuring that any errors contained in a preliminary investigative report are corrected before it is released in final form. That is its intended function.

§97.1035, Procedures for Accreditation Sanctions

Comment. Concerning §97.1035(d), a representative of ACE requested that the proposed rule be revised to include certain language contained in TEC, §39.133.

Agency Response. The agency disagrees. The language currently in effect was adopted effective November 6, 2001. See 26 TexReg 8820. Since that time, the TEC was amended to

reorganize the language formerly found in TEC, §39.131. Certain subsections of former TEC, §39.131, were broken out as independent statutory sections, and the proposed amendment to §97.1035 simply insures that the correct statutory provisions are referenced in the rule. No substantive change in the meaning of the existing rule is made or intended. The agency was required by former law to conduct its review in the same manner as by current law. The agency is required by TEC, §39.133, to follow its requirements in implementing §97.1035(d).

§97.1037, Record Review of Certain Decisions

Comment. Concerning proposed §97.1037, two attorneys advocated a "de novo" standard of review for the decisions required by proposed §97.1037.

Agency Response. The agency disagrees. TEC, §39.302, provides that a "challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code." Subchapter G of the Administrative Procedure Act governs a judicial appeal from a decision under that Act. Within that subchapter, §2001.173, Trial De Novo Review, governs those cases where the "manner of review authorized by law for the decision in a contested case that is the subject of complaint is by trial de novo." The manner of review authorized by TEC, §39.302, is not by trial de novo, but under "the substantial evidence rule." Accordingly, Government Code, §2001.173, does not apply to this review.

The commissioner of education is a public office established to make decisions in the field of public education, and TEC, Chapter 39, requires the commissioner to make all accreditation decisions. The commissioner may not assign this function to SOAH. Yet under HB 1, the decision of SOAH on a number of the most significant accreditation matters "is final and may not be appealed." See TEC, §39.302(c)(3). This vests an exceptional amount of authority over accreditation matters in an agency without jurisdiction or expertise in public education. The agency must interpret the statute so as to preserve all discretion over accreditation policy in the commissioner, while deferring to SOAH's authority to accomplish the purposes of the statute. Because SOAH's review is final and not appealable, all components of a complete accreditation decision must be accomplished by the commissioner in order for it to receive proper review.

Comment. Concerning proposed §97.1037, a representative of the Texas Chapter of the American Federation of Teachers (Texas AFT) stated if the record review is a prerequisite to an appeal, then deadlines should be stated in every document.

Agency Response. The agency disagrees. The comment does not directly address rule language that was included in the proposed new rule. Rather, the comment suggests a mode of practice under the rule. While the point is sound that the agency should provide clear notice in its official correspondence of the requirements under the rule, it is not appropriate to append language to this effect to every subsection of the rule. Subsection (g) of new §97.1037 clearly states the effect of failing to prosecute an appeal under the rule. Other parts of the rule deal with the requirements for prosecuting that appeal.

Comment. Concerning proposed §97.1037, five administrators and an individual suggested that the decision of the commissioner to assign an academic accountability rating under TEC, Chapter 39, should be reviewed under proposed §97.1037(a).

Agency Response. The agency disagrees. The procedures in §97.1037 do not meet the requirements of TEC, §39.301. Section 97.1037 is designed to meet the requirements of TEC, §39.302, which applies to different decisions under TEC, Chapter 39, and imposes different requirements. The rule applicable to an appeal under TEC, §39.301, has previously been adopted under 19 TAC Chapter 97, Subchapter AA, §97.1001.

Comment. Concerning proposed §97.1037, five administrators and an individual asked why charter amendment denials are not reviewable under the process of §97.1037(a).

Agency Response. The comments suggest that the decision of the commissioner under TEC, §12.114, whether to agree to amend a contract for charter should be reviewable via the process for appealing an accreditation decision to SOAH. The agency disagrees for the following reasons.

An open-enrollment charter is required by TEC, §12.112, to take the form of a written contract. Like all contracts, the charter is an agreement between the charter authorizer and the charter holder. It cannot exist without the agreement of both parties. While this agreement is initially negotiated at the moment of its creation, TEC, §12.114, provides a mechanism for negotiating amendments after its creation. Under contract law, an amendment of an existing contract requires the consent of both parties. Where one party does not agree to alter the existing contract, the prior agreement remains in effect and the proposed changes fail to become part of the agreement. For this reason, it is not possible for a revision of the charter contract to occur without the approval of the commissioner.

As stated in TEC, §12.114, "A revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner." Giving this approval must be a voluntary act. If the commissioner's agreement is not voluntary, the coercive nature of the approval renders the resulting agreement void under contract law. Thus, there can be no appeal from the commissioner to SOAH.

Comment. Concerning proposed §97.1037(a), a superintendent stated when accountability ratings are not reviewable it is unfair.

Agency Response. The agency disagrees. Under the provisions of TEC, §39.301, the commissioner is required to provide a process by which a school district or open-enrollment charter school can challenge agency decisions related to the academic or financial accountability systems, and provision for such challenge is made in both the academic accountability manual and the financial accountability manual, which are adopted annually. Language in §97.1037 does not deny a school access to this appeal process.

Comment. Concerning proposed §97.1037(a)(4), a board of trustees member requested clarification of the language of proposed §97.1037(a)(4) and the rule to which it refers, proposed §100.1041(e)(5).

Agency Response. The agency agrees with the need for clarification. The comment identifies a discrepancy between proposed §97.1037(a)(4) and the rule to which it refers, proposed §100.1041(e). The over-allocated funds to be recovered under TEC, §42.258, include both audit recoveries and other types of over-allocations, such as those recognized during the settle-up process. It was not the agency's intent to limit review of over-allocations under proposed §97.1037(a)(4) to those arising only from audits. Rather, the broader term "over-allocation" should replace the narrower, "audit recovery," in subsection (a)(4). In response to public comment, §97.1037(a)(4) was modified to

address an over-allocation rather than an audit recovery. This subsection was also modified to make a technical correction.

Comment. Concerning proposed §97.1037(b)(2), a representative of ACE advocated an objective, non-biased agency representative and a process and qualifications for selecting the representative. Two attorneys advocated substituting an independent hearing officer in lieu of the commissioner for purposes of making the decisions required by §97.1037.

Agency Response. The agency disagrees for the following reasons. The commissioner's decision cannot be rendered by a person independent of the commissioner because TEC, Chapter 39, requires the commissioner to make all accreditation decisions. TEC, §7.055(b)(5), permits this function to be delegated within the agency only. TEC, §39.302, authorizes substantial evidence review of the commissioner's decision by another state agency, but the commissioner may not assign the authority to make the accreditation decision to SOAH or to an independent hearing officer.

Agency staff who is most familiar with each district's performance should advise the commissioner on accreditation decisions respecting that district. The office of the commissioner of education was established by the Texas Legislature to make decisions in the field of public education. Like all executive agencies, the commissioner has jurisdiction over a highly specialized, complex, and technical area of governmental decision making. Absent the need for specialized expertise and experience, decisions that are made by the commissioner would be made either by the legislature through statutes or by the judiciary through individual case adjudication. The commissioner must bring to bear all the knowledge and skills available when making decisions committed to the commissioner by statute. Particular expertise resides in the senior staff responsible for administering the programs of the agency on a daily basis. Those are the individuals who will normally be designated to serve as the agency representative for purposes of the record review under §97.1037.

SOAH is a specialized agency whose expertise lies in the processes for administrative adjudication of any decision. It has great skill and knowledge concerning the procedural requirements for making a vast array of decisions, but it has no subject matter expertise in any field of knowledge that is the subject of these decisions. In particular, SOAH has no specialized knowledge that makes it an appropriate body to make substantive decisions respecting the accreditation of Texas public school districts.

Under HB 1, the decision of SOAH on a number of the most significant public education matters "is final and may not be appealed." See TEC, §39.302(c)(3). This vests an exceptional amount of authority over public education matters in an agency without jurisdiction or expertise in public education. The agency must interpret the statute so as to preserve all discretion over public education policy in the commissioner, while deferring to SOAH's authority to accomplish the purposes of the statute. The purpose of the review in §97.1037 is to make a record of the commissioner's decision. The purpose of the review established in new Chapter 157, Subchapter EE, is to provide an objective, non-biased appeal from this decision. The two processes serve entirely different functions and require decision-makers best suited to each task.

The agency finds it is inappropriate to preclude a TEA representative from serving on the grounds that the representative was involved in or is knowledgeable about the facts of the particular case. Rather, the TEA representative should have such knowledge in order to provide the best recommendation to the commissioner. If the TEA representative cannot provide objective professional advice to the commissioner in a given case, the commissioner will of course appoint a different representative.

Comment. Concerning proposed §97.1037(b)(3), a representative of ACE suggested that "ten calendar days" be extended to ten business or school days and suggested that the time allotted begin on actual receipt.

Agency Response. The agency disagrees. The language is based on existing §97.1031(b)(3) and serves a similar function. This language has been used extensively by the agency since its effective date on November 6, 2001. The language has functioned as intended and has not prevented extensions of time where appropriate.

Comment. Concerning proposed §97.1037(d)(1)(C), a representative of ACE requested that the specified time period be stated in terms of business days in lieu of calendar days.

Agency Response. The agency disagrees. This is inconsistent with the intent of the proposed rule, which is to insure that all sanctions appeals be completed in time for the affected school district to plan and implement the sanction by the start of the next succeeding school year. Section 97.1037 is not the procedure for appealing the commissioner's action under the relevant standards; it is the process by which the commissioner will take the appropriate action. Following this step, an appeal to SOAH may lie under new 19 TAC Chapter 157, Subchapter EE. The timelines established in §97.1037(d)(1)(C) are necessary in order to insure the timely completion of all such appeals for the coming school year, and to provide the district and campus administrative staff sufficient time to plan and implement any changes that may be required following the appeal.

Comment. Concerning proposed §97.1037(d)(1)(D), a representative of ACE requested that safeguards be included to insure that the agency complies with its own deadlines.

Agency Response. The agency disagrees for the following reasons. First, §97.1037(d)(1)(C) states a goal and not an absolute deadline for completion of the appeal. The purpose of stating the goal of 30 days for completion is to give appropriate guidance to the agency representative and the parties on the expected pace of the record review phase of the process. It does not preclude reasonable extensions of time for extenuating circumstances. Second, the purpose of the process established by §97.1037 is to create a record which may be reviewed by SOAH. Under the substantial evidence rule, the consequence for the agency's failure to present a sufficient record is that its intended decision will be reversed. This is a severe consequence, and more than sufficient to insure the agency will endeavor to present all the information necessary to support its decision. The agency must also, however, present this information in time for its intended sanction to be effectuated in the following school year. If the agency fails to make the record in time for the appeal to be concluded at SOAH, the consequence may be that its intended sanction cannot be implemented by the start of the next school year. Again, this consequence is more than sufficient to insure the agency will endeavor to make the record of its decision with all due speed.

Comment. Concerning proposed §97.1037(d)(3)(B), a representative of ACE requested that safeguards be included to insure that the district has reasonable opportunity to question all relevant witnesses and establish a complete record.

Agency Response. The agency disagrees. Section 97.1037(e)(13) allows for the participation of witnesses by telephone, and §97.1037(e)(12) permits the entire record review to be conducted by telephone. Section 97.1037(d)(3)(B) allows for the record review to be scheduled at a time that might accommodate a request that certain staff be physically present, but the interests of the district and the agency require that a record review be completed in a timely fashion. If, in extraordinary circumstances, the district believes the physical presence of certain staff was necessary for a fair decision to be reached, then §157.1159(b) permits this to be presented in the form of additional evidence on appeal.

Comment. Concerning proposed §97.1037(e)(11), a representative of ACE suggested that the district be allowed to determine the special skills and knowledge of the TEA representative during the record review.

Agency Response. The agency disagrees. Section 97.1037(e)(11) is taken from Government Code, §2001.090, which provides that the "special skills or knowledge of the state agency and its staff may be used in evaluating the evidence." This language takes note of the fact that the TEA was created by the legislature to make decisions in the field of public education. It is not a fact to be determined by the district but a legislative presumption stemming from the purpose for which the agency was established and the nature of the decisions it makes on a routine basis.

Comment. Concerning proposed §97.1037(g)(2), a school board member asked the meaning of proposed §97.1037(g)(2) and suggested that the agency should expressly state whether it interprets TEC, §39.1321(d), as modifying the right to a hearing under TEC, §12.115 and §12.116.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 made a significant change to the law governing a charter contract under TEC, §12.112. Not only must the procedures provided by TEC, §39.301 and §39.302, govern actions under TEC, Chapter 39; but once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. To the extent that it modifies or limits a procedural right that may have existed under prior law, HB 1 has amended TEC, §12.115. Under TEC, §12.1071(a), a charter holder that did not agree to be bound by this change was required to decline further funding of its charter program after HB 1 was enacted.

HB 1 enacted a comprehensive system of procedures for determining each district's performance under state accreditation standards and the sanctions and other actions required by that performance. Before HB 1, it might have been argued that a charter school, by reason of its contract with the state, had two opportunities to overturn the commissioner's accreditation decision, similar to all of the procedures available to a similarly situated school district. In addition, if that process did not change the outcome, it could demand a hearing under TEC, §12.115. TEC, §39.1321(d), clarifies that a contract under TEC, §12.112, does not shield its holder from appropriate action under the state accreditation system. The agency interprets subsections (c) and (d) of TEC, §39.1321, as intended to effectuate the policy stated in subsection (a), that the sanctions under TEC, Chapter 39, that apply to a school district or campus "apply in the same manner to an open-enrollment charter school."

Comment. Concerning proposed §97.1037(g), a representative of ACE commented that the timing of an automatic revocation under proposed §97.1037(g)(1)(A) could be disruptive to students, parents, and teachers of the district and suggested that a uniform timeline be set to avoid this.

Agency Response. The agency disagrees. The timing and effective date must be considered by the commissioner on a case-by-case basis as part of issuing a final order under §97.1037(f). It is not possible to fix a general rule that will address every imaginable set of circumstances that comes for decision, so the effective date of the decision should be established through the record review process.

Comment. Concerning proposed §97.1037, a legislator, a representative of ACE, an individual, five administrators, a charter school founder, a charter school superintendent, and a charter school chief executive officer and founder suggested that proposed §97.1037 implements a bill that failed to pass the Texas Legislature.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 enacted TEC, §39.1321, which is the basis for proposed §97.1037. This statute clearly states that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. TEC, §39.1321(c) and (d), expressly direct the commissioner to adopt rule text as specified in §97.1037(g). TEC, §39.1321(c), added by HB 1, directs the commissioner to establish specific requirements for automatic revocation or modification of the charter of an open-enrollment charter school if closure of the charter school is ordered. The corresponding language in §97.1037(g)(1) provides for revocation or modification of the charter on the effective date of a final decision ordering a charter school closure. TEC, §39.1321(d), added by HB 1, further specifies that an open-enrollment charter school is not entitled to an additional hearing for sanctions imposed under procedures provided by TEC, Chapter 12, Subchapter D. The corresponding language in §97.1037(g)(2) implements this statutory specification. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1037, a CEO and founder of a charter school stated that the proposed rule will have a negative impact on drop-out recovery charter schools, handcuffing the agency in its mandated sanction requirements and then denying the schools their full measure of constitutional due process protection. These rules include §97.1037, which establishes a record review process that gives the commissioner total discretion in deciding accountability appeals and then insulates those decisions from both judicial and administrative appeal.

Agency Response. To the extent this comment deals with the process mandated by TEC, §39.301, for the appeal of an accountability rating, the agency cannot respond. The rules promulgated under TEC, §39.301, are not proposed for adoption or modification. To the extent this comment deals with the process mandated by TEC, §39.302, for the appeal of an accreditation sanction or other action, the agency finds that new §97.1037 is required by TEC, §39.302, which provides that a "challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code." A substantial evidence review of the commissioner's de-

cision requires two steps: a decision by the commissioner under the relevant provision of TEC, Chapter 39, and a review of that decision by SOAH. Section 97.1037 is not the appeals process required by TEC, §39.302. It is the process by which the commissioner makes the decision that is subject to appeal. Because the manner of review is by substantial evidence on the record, the agency must make a record which may be reviewed under the substantial evidence rule. Section 97.1037 is simply the process by which the record of the commissioner's decision is created. Under TEC, §39.302(c)(3), SOAH's determination of the appeal of the commissioner's decision "is final and may not be appealed."

General Comment

Comment. A CEO and founder of a charter school asked that the agency carefully consider the negative impact that the proposed rules under TEC, Chapter 39, will have on drop-out recovery charter schools. The commenter stated the best and most experienced minds remind us of the need to overhaul the state accountability system to recognize and reward these special schools, and the proposed rules as a group ignore the promise that adverse action against the charter contract will consider the "best interest of the students" under TEC, §12.115(b). None of the proposed rules for adoption under Title 19, Texas Administrative Code Chapter 97, Subchapter DD, or Chapter 157, Subchapter EE, give any weight to this interest; it is not even mentioned. TEC, Chapter 12, specifically mandates consideration of this factor when applying accountability sanctions to charters under TEC, Chapter 12. The commenter strongly urged that these errors and oversights be corrected, and that the adoption of the rules be delayed until the next legislative session to permit the legislature the opportunity to correct accountability to reflect learning growth.

Agency Response. TEC, §39.1321, provides that TEC, §12.115(b), has no applicability to an accountability sanction under Chapter 39. However, the accountability standards established by the commissioner under TEC, Chapter 39, do take into consideration the best interests of the students. It is in the best interests of its students that each public school meet the minimum state standards. These substantive standards are not found in either Chapter 97, Subchapter DD, or Chapter 157, Subchapter EE, because those provisions deal exclusively with the process. The substantive standards are adopted at Chapter 97, Subchapter EE, which comprises the commissioner's determination on the best interest of the state's students with respect to each of the criteria set or authorized to be set by statute. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Two attorneys requested that the comment period be expanded to allow for additional time and input.

Agency Response. The agency agrees. The public comment period was extended through August 20, 2007.

The amendments and new section are adopted under the Texas Education Code (TEC), §39.076, which authorizes the agency to adopt written procedures for conducting on-site investigations under TEC, Chapter 39, Subchapter D; and TEC, §39.302, which authorizes the agency to establish procedures for creating an administrative record for review by the State Office of Administrative Hearings for certain decisions.

The amendments and new section implement the Texas Education Code, §39.076 and §39.302.

§97.1037. Record Review of Certain Decisions.

(a) Applicability. This section applies only to:

(1) a notice under §97.1035 of this title (relating to Procedures for Accreditation Sanctions) proposing to order:

(A) alternative management of a school district campus or a charter school campus under TEC, §39.1327;

(B) closure of a school district or an open-enrollment charter school under TEC, §§39.071(c), 39.131(a), or 39.1321(c); or

(C) closure of a school district campus or charter school campus under TEC, §39.1324 or §39.1327;

(2) assignment under §97.1055 of this title (relating to Accreditation Status) of an accreditation status of Accredited-Warned or Accredited-Probation;

(3) assignment of a board of managers under TEC, §39.136 and §39.131(a)(9), or TEC, §39.1324(c); or

(4) request for review of an over-allocation from an open-enrollment charter school granted by the commissioner of education under §100.1041(e) of this title (relating to State Funding).

(b) Notice. Notice of a proposed order subject to this section shall be made as provided by §97.1035(d) of this title and this section.

(1) The notice shall attach or make reference to any Texas Education Agency (TEA) reports, final investigative reports, or other information on which the proposed order is based.

(A) Information maintained on the TEA website may be referenced by providing a general citation to the information.

(B) TEA reports previously sent to the district, charter, or campus may be referenced by providing the title and date of the report.

(C) On request, the TEA shall provide copies of, or reasonable access to, information referenced in the notice.

(2) The notice shall state the procedures for requesting a record review of the proposed order under this section, including the name and department of the TEA representative to whom a request for record review may be addressed.

(3) The notice shall set a deadline for requesting a record review, which shall not be less than ten calendar days from the date of mailing of the notice.

(c) Request. The superintendent of the district or chief operating officer of the open-enrollment charter school may request, in writing, a record review under this section.

(1) The request must be properly addressed to the TEA representative identified in the notice under subsection (b)(2) of this section, and must be received by the TEA representative on or before the deadline specified in subsection (b)(3) of this section.

(2) A timely and sufficient request for record review is a prerequisite for an appeal of the proposed order under Chapter 157, Subchapter EE, of this title (relating to Review by State Office of Administrative Hearings: Certain Accreditation Sanctions).

(d) Preliminary matters.

(1) In response to a request under subsection (c) of this section, the TEA representative shall provide written notice to the district or charter of the date, time, and place for the record review.

(A) In this written notice, the TEA representative may:

(i) set time limits for presentations on the record;

(ii) set deadlines for exchanging documents prior to the record review;

(iii) set deadlines for identifying participants who may present information or ask questions during the review; and

(iv) provide any other instructions on the conduct of the record review.

(B) The TEA representative may consider reasonable requests to reschedule the record review and associated deadlines, but shall give primary importance to the need for a speedy resolution of the matter under review.

(C) The record review should in all instances be completed on or before the expiration of 30 calendar days following receipt of the request under subsection (c) of this section.

(D) Timely completion of the record review under subsection (c) of this section is a prerequisite for an appeal of the proposed order under Chapter 157, Subchapter EE, of this title.

(2) The district or charter shall submit any written information to the TEA representative in advance of the record review. To be considered part of the record, such information must also be presented during the review.

(3) In its request for record review, or within a reasonable time thereafter, the district or charter may request that specific TEA staff members attend the record review to assist the TEA representative in reviewing the information presented.

(A) Such request shall be limited to staff directly involved in the development of the information identified in the notice under subsection (b) of this section.

(B) If reasonable and practicable, the TEA representative shall schedule the record review so as to allow the requested staff to attend.

(4) At all times prior to the record review, the district or charter is encouraged to contact the office of the TEA representative to discuss the process and to facilitate preliminary matters. However, such communications will not be recorded and will not be considered part of the record.

(5) The county-district or campus identification number of the affected entity must be included in all written correspondence on the record review, as well as the date the notice was issued under subsection (b) of this section. Correspondence relating to the review may be made part of the record.

(6) All deadlines under this section shall be calculated from the date of actual receipt. No mailbox rule applies.

(e) Record review.

(1) The TEA representative shall meet with the superintendent and/or representatives of the district or charter at the TEA headquarters in Austin, Texas, to receive oral and written information on the proposed order.

(2) The proceedings shall be recorded by audiotape or similar means. The audiotape and all written information presented during the review shall comprise the official record of the proceedings.

(3) The district or charter may have legal counsel present during the proceedings.

(4) The district or charter may present information verbally and in writing, and may rebut information presented by the TEA staff.

(5) The rules of evidence do not apply. Presentations need not follow question-and-answer format.

(6) The district or charter may ask questions of the TEA staff. The TEA representative may designate a specific portion of the meeting for this purpose.

(7) The TEA representative may ask questions of any participant directly or through the TEA staff.

(8) The TEA representative shall strictly confine presentations and questions to the matters set forth in the notice, and shall exclude information that is irrelevant, immaterial, or unduly repetitious.

(9) On request, the TEA representative shall include in the record a brief written proffer describing any information excluded under paragraph (8) of this subsection. In lieu of a written proffer, an oral statement may be recorded on a separate audiotape. If the excluded information is in writing, the document shall be identified as excluded and preserved with the record.

(10) The TEA representative may take official notice of generally recognized information within the TEA's area of specialized knowledge.

(A) Each party shall be notified either before or during the record review, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(B) Any participant may present information to rebut information that is officially noticed.

(11) The special skills and knowledge of the TEA representative and staff shall be used in evaluating all information presented during the record review.

(12) At the request of the district or charter, a record review may be conducted by telephone or similar means.

(13) A participant may present information via telephone or similar means during any record review.

(f) Final order. Following the record review, a final order will be issued. The final order may include changes or additions to the proposed order and such modifications are not subject to another record review procedure. This order may be appealed only as provided by Chapter 157, Subchapter EE, of this title.

(g) No request. If no record review is requested by the deadline specified in subsection (b)(3) of this section, a final order may be issued without record review. An order issued without record review may not be appealed under Chapter 157, Subchapter EE, of this title, or otherwise.

(1) The charter of an open-enrollment charter school is automatically:

(A) revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner of education ordering the school district or charter school closed under this subsection; and

(B) modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under this subsection.

(2) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this subsection, a charter school is not entitled to an additional hearing relating to the modifi-

cation, placement on probation, revocation, or denial of renewal of a charter as provided by TEC, Chapter 12, Subchapter D.

(h) Other law. Government Code, Chapter 2001, and TEC, §7.057, do not apply to a record review under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2007.

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Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

19 TAC §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1061, 97.1063, 97.1065, 97.1067, 97.1069, 97.1071, 97.1073

The Texas Education Agency (TEA) adopts new §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1061, 97.1063, 97.1065, 97.1067, 97.1069, 97.1071, and 97.1073, concerning accreditation statuses, standards, and sanctions. New §§97.1051, 97.1053, 97.1055, 97.1057, 97.1061, 97.1063, and 97.1067, are adopted with changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3443). New §§97.1059, 97.1065, 97.1069, 97.1071, and 97.1073 are adopted without changes to the proposed text as published in the June 15, 2007, issue and will not be republished.

The adopted new sections define the accreditation statuses of Accredited, Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked and state how accreditation statuses would be determined and assigned to school districts. The adoption also establishes accreditation standards and sanctions, including definitions, purpose, technical assistance teams, campus intervention teams, reconstitution, campus closure, alternative management, intervention stages, and oversight appointments. The adoption reflects changes required by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

HB 1, 79th Texas Legislature, Third Called Session, 2006, amended the TEC, Chapter 39, Public School System Accountability, and, as a result of these changes, new rules must be adopted to implement the changes. The new 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, establishes new rules to ensure compliance with HB 1, as follows.

New 19 TAC §97.1051, Definitions, defines by rule a number of terms, including "campus," "campus closure," and "reconstitution."

In response to public comment, 19 TAC §97.1051 is modified to incorporate a definition of "person" and to revise the definitions of "campus closure" and "reconstitution." Additionally, a previous reference to the application of these definitions to this subchapter has been revised to reference their applicability to Subchapter DD of this chapter as well as Subchapter EE. Also, in response to comments, terms dealing with charter schools have been removed, leaving those matters to be governed by statute.

New 19 TAC §97.1053, Purpose, states the statutory purposes of accreditation statuses and sanctions. The adoption also explains that the accreditation status assigned to a district under this new subchapter reflects performance beginning with the district's 2006 ratings; however, performance for earlier years would be considered for the purposes of accreditation sanctions.

In response to public comment, 19 TAC §97.1053(b) is modified to indicate that the accreditation status assigned to a district under this new subchapter generally reflects performance beginning with the district's 2006, as opposed to 2007, ratings. Subsection (b) is also modified to clarify that both accreditation statuses and sanctions assigned under the subchapter shall take into consideration the performance of districts for earlier years. In response to comments, references to charter schools have been removed, leaving those matters to be determined by statute.

New 19 TAC §97.1055, Accreditation Status, defines the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked are determined, in accordance with the TEC, §39.071. The adopted rule also provides the process the commissioner and district must follow when the commissioner determines a district's accreditation status to be Accredited-Warned or Accredited-Probation, including required notification of such status to parents of students enrolled in the district and property owners in the district.

In response to public comment, 19 TAC §97.1055(a)(1)(A) is modified to revise the language describing the meaning of the Accredited status to ensure clarity regarding the timing of status assignment. Additionally, 19 TAC §97.1055(a)(6) is added to address a circumstance in which it may be necessary to leave a district's accreditation status pending during the course of certain investigative activities. Also, 19 TAC §97.1055(b)(1), (c)(1), and (d)(1) are modified to indicate that the accreditation status assigned to a district under this new subchapter reflects performance beginning with the district's 2006, as opposed to 2007, ratings. A technical correction was made to 19 TAC §97.1055(a)(4) to substitute a citation to a new rule for a citation to the TEC to provide additional specificity.

New 19 TAC §97.1057, Accreditation Sanctions, establishes that if a district or campus does not satisfy the accreditation criteria, the commissioner may lower its accreditation status, academic accountability rating, or financial accountability rating or take any other action under the subchapter to the extent the commissioner determines is reasonably required.

In response to public comment, 19 TAC §97.1057(d) is modified to reflect that the sanctions referenced in the subsection may be applied to a district or campus, as applicable. Additionally, the language of 19 TAC §97.1057(e)(3) is modified to revise the language regarding sanction determinations resulting from receipt of a substantial over-allocation of funds.

New 19 TAC §97.1059, Standards for All Accreditation Sanction Determinations, reflects certain standards to be used by the commissioner in determining sanctions. The new rule states that

the commissioner shall impose sanctions individually or in combination as determined necessary to achieve the purposes of the sanctions and shall consider the seriousness, number, extent, and duration of deficiencies identified by the TEA in determining sanctions. No changes were made to this section since published as proposed.

New 19 TAC §97.1061, Technical Assistance Team Campuses, references the annual assignment of a technical assistance team to a campus rated Academically Acceptable if that campus would be rated Academically Unacceptable using the accountability standards for the subsequent year. The adopted new rule addresses the waiver of this requirement under standards adopted in the applicable annual accountability manual. The section also defines the composition and discusses the activities of the technical assistance team.

In response to public comment, 19 TAC §97.1061 is modified by the addition of subsection (f) related to circumstances in which a campus that otherwise would be assigned a technical assistance team already has a campus intervention team (CIT) in place.

New 19 TAC §97.1063, Campus Intervention Team; Reconstitution, implements the provisions of HB 1 related to campuses rated Academically Unacceptable under the state academic accountability rating system and the assignment of a CIT to those campuses. Additionally, the section outlines the obligation of certain principals to participate in the school leadership pilot program required under the TEC, §11.203, and the district's responsibility for covering costs associated with the program. The section also defines the timeline under which a campus can and/or will be ordered to undergo reconstitution. In addition, the adopted new rule describes the activities in which the district, campus, and the CIT must engage to facilitate the reconstitution, including timelines and activities related to the retention or removal of campus educators, including the principal. The adopted new rule also discusses circumstances under which the TEA may assign a monitor, conservator, management team, or board of managers to the campus to ensure the implementation of its school improvement/reconstitution plan and when the TEA may order alternative management or closure of the campus.

In response to public comment, 19 TAC §97.1063(a)(2) is modified to clarify the reference to a campus', as opposed to a district's, failure to implement a school improvement plan or the recommendations of a CIT. In addition, a change was made to 19 TAC §97.1063(b) to specify that the school leadership pilot program is statutorily required. The change also references the program generally in the event the program name changes in the future. Additionally, the language of 19 TAC §97.1063(c)(3) and (e) is modified to better describe when the commissioner will order alternative management or campus closure when a campus has failed to implement recommendations of the CIT or terms of the school improvement or school improvement and reconstitution plan.

New 19 TAC §97.1065, Campus Closure or Alternative Management, implements the provisions of HB 1 related to circumstances under which the commissioner orders and/or is required to order alternative management or closure of a campus. The adopted new rule clarifies that the commissioner may take other actions in combination with actions taken under this section. The rule also clarifies that, when the commissioner's order requires the district or campus to select a specific professional service provider, the district is not required to follow competitive bidding procedures. The adopted new rule provides parameters to be considered by the commissioner in determining whether to order alternative management or closure of a campus. No changes were made to this section since published as proposed.

New 19 TAC §97.1067, Alternative Management of Campuses, implements the provisions of HB 1 related to the assignment of alternative management entities to certain campuses. The adopted rule specifies the timelines and requirements for district implementation of an alternative management contract and discusses the roles that will be played by the alternative management entity. The adopted rule also specifies a district's obligation to a campus for which alternative management has been ordered.

In response to public comment, 19 TAC §97.1067(c)(2) is modified to clarify the references to statute and rule regarding ways in which the commissioner may respond to reports received from an alternative management service provider.

New 19 TAC §97.1069, Providers of Alternative Campus Management, provides for a request for qualifications (RFQ) to solicit proposals from qualified non-profit management entities to assume the alternative management of a campus. The rule also specifies that the commissioner may appoint a school district in the same education service center region to provide services as the alternative management of the campus in the same manner as a non-profit entity. No changes were made to this section since published as proposed.

New 19 TAC §97.1071, Special Program Performance; Intervention Stages, codifies intervention and sanction processes in place under the Performance-Based Monitoring (PBM) system. The adopted rule describes intervention activities, notification processes for PBM intervention staging, and possible interventions and/or sanctions that may be implemented under the PBM system. No changes were made to this section since published as proposed.

New 19 TAC §97.1073, Appointment of Monitor, Conservator, or Board of Managers, is added to establish criteria for the appointment of a monitor, conservator, management team, or board of managers by the commissioner. No changes were made to this section since published as proposed.

The public comment period on the proposal began June 15, 2007, and ended July 15, 2007. The comment period was extended through August 20, 2007. Following is a summary of public comments received and corresponding agency responses regarding the proposed new sections.

§97.1051, Definitions

Comment. Concerning proposed §97.1051, a representative of Texas State Teachers Association (TSTA) requested that definitions of campus intervention team (CIT), technical assistance team (TAT), manager conservator, and any other term of art used in the rules be included in the definitions section.

Agency Response. The agency disagrees. These terms are defined in statute under Texas Education Code (TEC), §§39.131, 39.132, 39.1322, and 39.1323, and the agency is using those definitions.

Comment. Concerning proposed §97.1051(3), two school district administrators and a representative of Texas Association of School Administrators (TASA) stated that requiring completely different instructional programs at grade levels not previously served would make the cost of the retrofit of the building and contents quite high.

Agency Response. The agency disagrees. While the agency agrees that the cost of retrofitting a high school to serve elementary students could be quite high in unique circumstances, closure is only ordered when a campus has exhibited persistently low performance over four ratings cycles.

Comment. Concerning proposed §97.1051(3), a school district administrator stated that the elected school board of the district should decide if a school building is to be repurposed, but the commissioner could determine the factors that would govern the repurposing, and suggested possible factors for consideration. The commenter predicted the greatest impact of a closure determination by the agency would be on high schools, and that crowded conditions in other high schools and distance between high schools would result in long commutes. The commenter proposed that the agency set a date for campus closure that is minimally disruptive.

Agency Response. The agency disagrees in part and agrees in part. The intent of the TEC, §39.1324, is to impose mandatory sanctions on those campuses that exhibit low performance persisting over four or more ratings cycles, and the law gives authority to the commissioner to determine when a campus must be closed. A campus subject to mandatory sanctions under TEC, §39.1324, has exhibited patterns of persistent low performance, and the agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session. The governing board of a district or charter school has multiple opportunities to make changes to the campus in prior years, based on criteria it sets. The agency agrees that consideration should be given to disruptions, but also recognizes the need to balance this consideration against the educational needs of students served by the campus. At such time that a campus closure would be ordered, the agency will set a date that provides reasonable opportunity for the district to prepare.

Comment. Concerning proposed §97.1051(3), two school district administrators; two individuals from the Texas Institute for Education Reform; and representatives of TASA, TSTA, Texas School Alliance (TSA), and Texas Association of School Boards (TASB) stated that the proposed rule limits the options for use of a repurposed building by requiring that the repurposed campus not serve students at the same grade levels as the closed campus because this would exclude using the repurposed building to serve students of one gender at the same grade levels, or entering into an agreement with charter school operators to operate a campus with the same grade levels. The TASB representative stated that this appears inconsistent with the TEA's high school redesign initiative.

Agency Response. The agency disagrees. A district ordered to close a campus may apply to the commissioner to repurpose the facility. Under the provisions of TEC, §39.1324, closure occurs after the campus has exhibited patterns of persistent low performance. The agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session.

Comment. Concerning proposed §97.1051(3), a representative of TASB stated that the proposed rule regarding repurposing a building are overly restrictive and could impose significant hardships on districts that only have one or two schools serving the same grade levels. The representative commented that small districts may not have the facilities to comply. The commenter recommended that the agency require the submission of a plan describing how the facility will be used to promote high achievement.

Agency Response. The agency disagrees. Under the provisions of TEC, §39.1324, closure occurs after the campus has exhibited patterns of persistent low performance. The agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session.

Comment. Concerning proposed §97.1051(3), a representative of TASB recommended allowing local school boards to determine how best to use their facilities under circumstances in which closure is ordered.

Agency Response. The agency disagrees. The intent of the TEC, §39.1324, is to impose mandatory sanctions on those campuses that exhibit low performance persisting over four or more ratings cycles, and the law gives authority to the commissioner to determine when a campus must be closed. A campus subject to mandatory sanctions under TEC, §39.1324, has exhibited patterns of persistent low performance, and the agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session. The governing board of a district or charter school has multiple opportunities to make changes to the campus in prior years, based on criteria it sets.

Comment. Concerning proposed §97.1051(3)(C), two individuals from the Texas Institute for Education Reform questioned the need to change the name of the school building in order to comply with the definition of closure and commented that this discourages the use of legislative options.

Agency Response. The agency disagrees. The intent of the TEC, §39.1324, is to impose mandatory sanctions on those campuses that exhibit low performance persisting over four or more ratings cycles, and the law gives authority to the commissioner to determine when a campus must be closed. A campus subject to mandatory sanctions under TEC, §39.1324, has exhibited patterns of persistent low performance, and the agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session. Requiring the assignment of a different name for the facility is one of the steps the district must take to assure the agency and the public that the multiple-year Academically Unacceptable facility is closed.

Comment. Concerning proposed §97.1051(3)(C)(ii), two school district administrators, a representative of the Texas Chapter of the American Federation of Teachers (Texas AFT), a representative of TSTA, and a representative of TASA objected to the requirements that at least 75% of the students and 75% of the faculty of a closed campus be removed or reassigned and questioned how the 75% figure was determined.

Agency Response. The agency disagrees in part and agrees in part. HB 1, 79th Texas Legislature, Third Called Session, establishes requirements for the closure of campuses that have exhibited patterns of persistent low performance over four or more years. Repurposing of a building occurs within the context of closure, and the agency has allowed a degree of flexibility for the repurposing of a building for which closure has been ordered. Given the purpose of this section, which is to impose mandatory sanctions in accordance with the requirements of HB 1 and TEC, §39.1324, the percentages were established to ensure that repurposing of a building meets the statutory requirements for closure of the campus. However, in response to public comment, the definition for campus closure was modified in paragraph (2)(C)(ii) to change to 50% the percentage of students who must be removed or reassigned to other campuses.

Comment. Concerning proposed §97.1051(3)(C)(ii), a representative of TSA and two school district administrators stated that

the restrictions on repurposing would limit the district's ability to repurpose the campus, commented that the criterion for repurposing campuses that have been closed by the commissioner may prohibit the effective and efficient use of facilities, and proposed that the agency should instead examine a number of criterion holistically in order to provide flexibility to the commissioner in repurposing a building.

Agency Response. The agency disagrees. The rule language provides sufficient flexibility to the commissioner while providing direction to school districts for planning repurposing of a campus resulting from a closure determination.

Comment. Concerning proposed §97.1051(3)(C), a representative of TASA stated such prescriptive requirements may lead to the inefficient use of facilities by school districts, recommended less prescriptive and more flexible criteria be developed, and suggested such criteria. The commenter stated many facilities are built to suit the needs of certain student populations and may not be able to meet the needs of a different population without considerable expense. The commenter recommended that the commissioner be granted additional authority to determine how the students will be best served by changes to the campus.

Agency Response. The agency disagrees. The intent of the TEC, §39.1324, is to impose mandatory sanctions on those campuses that exhibit low performance persisting over four or more ratings cycles, and the law gives authority to the commissioner to determine when a campus must be closed. A campus subject to mandatory sanctions under TEC, §39.1324, has exhibited patterns of persistent low performance, and the agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session. The governing board of a district has multiple opportunities to make changes to the campus in prior years, based on criteria it sets.

Comment. Concerning proposed §97.1051(3)(C)(ii), a representative of TSA stated concern about the effect of closing a school on the neighborhood, the surrounding community, and the future academic performance of the students. The commenter stated the proposed rule appears to bar the commissioner from considering such factors.

Agency Response. The agency agrees that closing a school has an effect on a neighborhood and community; however, this section of the proposed rule addresses a campus that exhibits a pattern of consistently low performance. Closure of a campus under the requirements of §97.1051(2)(C) occurs after the campus exhibits low performance persisting over four or more ratings cycles. TEC, §39.1324, provides in subsection (e) that the commissioner may order closure or pursue alternative management, and in subsection (f) the statute requires that the commissioner order closure or pursue alternative management. The option of alternative management allows the commissioner to consider the effects of closing a school as factors in the decision.

Comment. Concerning proposed §97.1051(3)(C)(i), a representative of TSTA stated its contention that facilities are configured for specific age groups of students, and suggested this section be deleted. The commenter recommended that management teams be assigned to improve student performance and make decisions regarding reassignment of students and faculty and regarding operations. The commenter also suggested that rotating students at grade levels would allow the district to continue to keep age-appropriate buildings in use until the recommendations of the intervention team are fully implemented.

Agency Response. The agency disagrees. The intent of the TEC, §39.1324, is to impose mandatory sanctions on those campuses that exhibit low performance persisting over four or more ratings cycles, and the law gives limited authority to the commissioner to determine when a campus must be closed. A campus subject to mandatory sanctions under TEC, §39.1324, has exhibited patterns of persistent low performance, and the agency finds that the definition aligns with the intent of HB 1, 79th Texas Legislature, Third Called Session.

Comment. Concerning proposed §97.1051(6)(A), a representative of Association of Texas Professional Educators (ATPE) requested removal of the words "some or all" because this wording limits the discretion of the CIT by effectively requiring the removal of educators from the campus, and in so doing goes beyond the statutory requirements.

Agency Response. The agency disagrees in part and agrees in part. The words "some or all" will remain in the rule in alignment with the intent of HB 1, 79th Texas Legislature, Third Called Session. However, the definition for reconstitution is modified to clarify that the CIT shall take into consideration any proactive measures the school or district has already taken regarding campus personnel. The definition for reconstitution is renumbered as paragraph (4) due to the revision of definitions under this section.

Comment. A legislator, a charter school chief executive officer (CEO) and founder, five administrators, a charter school founder, a representative of ACE, a superintendent of a charter school, and an individual suggested that the agency's proposed rules under TEC, Chapter 39, exceed its statutory authority. A legislator, charter CEO and founder, five administrators, a charter school founder, a representative of ACE, a superintendent of a school, and an individual suggested that the agency's proposed rules under TEC, Chapter 39, implement a bill that failed to pass the Texas Legislature. A legislator, a charter CEO and founder, five administrators, and a charter school founder suggested that the agency's proposed rules under TEC, Chapter 39, violate the procedural due process rights of charter holders.

Agency Response. In response to these comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. A CEO and founder of a charter school asked that the agency carefully consider the negative impact that the proposed rules under TEC, Chapter 39, will have on drop-out recovery charter schools. The commenter stated the best and most experienced minds remind us of the need to overhaul the state accountability system to recognize and reward these special schools, and the proposed rules as a group ignore the promise that adverse action against the charter contract will consider the "best interest of the students" under TEC, §12.115(b). The commenter strongly urged that these errors and oversights be corrected, and that the adoption of the rules be delayed until the next legislative session to permit the Legislature the opportunity to correct accountability to reflect learning growth.

Agency Response. In response to this comment, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

§97.1053, Purpose

Comment. Concerning proposed §97.1053(b)(4), a representative of Texas AFT stated that the proposed language suggests that schools may be penalized to serve as an example to others without strictly focusing on the facts and the best interest of the school's students.

Agency Response. The agency disagrees. Any system of sanctions is intended to change behavior by providing motivation for improvement. A sanction is distinct from an intervention, although both are intended to induce change. A sanction includes the element of deterrence. Closure of a district is inherently harsh, yet this is required by TEC, §§39.071(c), 39.131(a), and 39.1321(c). Similarly, closure of a campus is inherently harsh but is required by TEC, §39.1324 and §39.1327. One benefit to the school children in attendance at the affected campus or district may be that the low-performing school is closed, causing the students to attend a school that is better able to serve them. However, this is not the primary benefit to those students. The primary benefit of providing credibly for district and campus closure is that, because these consequences are the only alternative, the great majority of districts will choose to make improvements needed to effectively address their accreditation weaknesses. Section 97.1053 does not make general deterrence the sole or even the primary purpose of sanctions under these rules. However, it is an essential purpose and should be identified as such.

Comment. Concerning proposed §97.1053(b), a representative of a board of trustees stated that the proposed rule addresses the purposes for accreditation statuses and sanctions, but proposed paragraphs (1) and (5) address only the standards for sanctions. The commenter questioned whether the purposes listed are limited to sanctions, or also cover accreditation statuses.

Agency Response. The agency disagrees. Paragraphs (1) and (5) are both related to the purposes of accreditation statuses and sanctions, as stated in subsection (a).

Comment. Concerning proposed §97.1053(c), a representative of Association of Charter Educators (ACE) stated that the proposed language indicates that accreditation status commences with the 2007 ratings, but that sanctions can be applied based on earlier years' performance. The commenter stated that because the legislature made charter schools subject to TEC, Chapter 39, sanctions in HB 1, 79th Texas Legislature, Third Called Session, the only relevant sanctions for charter schools would be for performance that occurred after the effective date of HB 1.

Agency Response. The agency disagrees. Since the inception of the charter program, charter schools have been subject to accreditation sanctions under TEC, Chapter 39. See TEC, §12.104(b)(2)(L). Since 1995, the legislature has amended Chapter 39 many times. Each time it did so, charter schools were bound by the new law. HB 1 is no different in this regard. However, HB 1 is unique in two respects. In HB 1, the legislature provides the manner in which the changes to Chapter 39 were to be applied to charter schools. See TEC, §39.1321. Also in HB 1 the legislature provides that the commissioner must impose a sanction on a campus on the basis of academic performance ratings earned for academic years prior to the enactment of the changes. See TEC, §39.1326. Charter operators were required by TEC, §12.1071, to repudiate these changes by declining further funding after HB 1 if they did not agree to be bound by it.

§97.1053, Purpose, and §97.1055, Accreditation Status

Comment. Two individuals from the Texas Institute for Education Reform questioned whether proposed §97.1053(c) and §97.1055(b)(1), (c)(1), and (d)(1) mean the initial accreditation assigned a district will exclude any consideration of their performance ratings prior to 2007, and if a district with exemplary ratings since the beginning of the ratings system will receive the same accreditation status as a district that was rated Academically Unacceptable every year until 2007. The commenters contended that there is no reason not to consider prior ratings in making decisions about the initial accreditation status, stated that a district that has received consecutive Academically Unacceptable ratings that would warrant a lowered status should be assigned that status, and asked that this limitation be deleted from the proposed rules.

Agency Response. The agency agrees in part. In response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of accountability ratings used for determination of accreditation status from 2007 to 2006. This reflects the date of passage of HB 1, 79th Texas Legislature, Third Called Session, in 2006. Although ratings from 2006 forward will generally be considered for purposes of counting the number of years of performance identified in §97.1055, ratings and other performance indicators from earlier years are a relevant consideration. For example, under §97.1055(b)(3), (c)(3), and (d)(3), the commissioner may consider the ratings history of the district in addition to the factors identified by §97.1055(b)(1), (c)(1), and (d)(1). In addition, §97.1055(a) was modified to add new paragraph (6) to establish that when necessary to achieve the purposes of §97.1053, the commissioner may withhold the release of an accreditation status pending investigation. This may be especially important in transitioning to the new system.

§97.1055, Accreditation Status

Comment. Concerning proposed §97.1055, a representative of TASB expressed concern that subsections (b)(3), (c)(3), and (d)(3) exceed the statutory authority given the commissioner and could serve as the legal basis for a challenge for the TEA's accreditation ratings. The commenter suggested elimination of subsections (b)(3), (c)(3), and (d)(3).

Agency Response. The agency disagrees. HB 1 gives the commissioner broad discretion to define the accreditation statuses listed in TEC, §39.071(a), and to determine each accreditation status annually under TEC, §39.071(b). The commissioner is authorized and directed to consider the factors identified by TEC, §39.071(b)(1). Section 97.1055(b)(3), (c)(3), and (d)(3) provides the commissioner the flexibility to take into account the unique circumstances of each case. Strict application of the general standards set forth in §97.1055(b)(1), (c)(1), or (d)(1) could lead to outcomes that are inconsistent with the purposes of the statutory framework or contrary to sound public school administration.

Comment. Concerning proposed §97.1055, an individual stated the proposed rules are acceptable, but may not be sufficient for institutions that have illegally tried to avoid negative accountability ratings. The commenter stated that more stringent rules may be needed for districts that have misrepresented facts and data, or broken laws.

Agency Response. The agency agrees that if a school district has knowingly misrepresented information or broken laws more stringent action may be required. Section 97.1055(b)(2)(B), (c)(2)(B), (d)(2)(B), and (e) provide the possibility that sanctions may be accelerated and accreditation status lowered as the result of an investigation into possible illegality.

Comment. Concerning proposed §97.1055, an individual stated if a district or campus is in noncompliance with state and federal statutes there should be no probationary or warning periods.

Agency Response. The agency agrees that the district and campus must be in compliance with state and federal statute, and has implemented monitoring and accountability systems to ensure compliance. The rules as written address the ability of the agency to accelerate sanctions and to order a change to a district's accreditation status or revoke accreditation. Section 97.1055(b)(2)(B), (c)(2)(B), (d)(2)(B), and (e) provide the possibility that sanctions may be accelerated and accreditation status lowered as the result of an investigation into possible illegality. Section 97.1055(b)(3), (c)(3), and (d)(3) permit the commissioner to take appropriate action without first resorting to action that would be inappropriately lenient under the circumstances.

Comment. An individual recommended immediate revocation of State Board for Educator Certification (SBEC) certification for accountable individuals who have not followed statute.

Agency Response. The agency disagrees. The purpose of this rule is not to address individual educator accountability nor SBEC requirements. In circumstances in which an educator fails to abide by statute there may be a need for sanctions, and §97.1055(b)(2)(B) and (c)(2)(B) provide that additional district sanctions may result from an investigation.

Comment. An individual stated when the law is broken one should pay restitution for infringements.

Agency Response. The agency disagrees. The agency lacks statutory authority to impose restitution as a penal sanction. Similarly, the agency lacks statutory authority to impose restitution in the form of a civil penalty. Accordingly, the agency is without statutory authority to comply with the requested change.

Comment. Concerning proposed §97.1055(a)(1)(A)(ii), a representative of Texas Classroom Teachers Association (TCTA) commented that the proposed language could be interpreted to indicate that a school district that has been Accredited-Warned or Accredited-Probation in the past cannot receive accredited status in the current year.

Agency Response. The agency agrees that the proposed language could be misconstrued to reflect past tense. In response to public comment, §97.1055(a)(1)(A)(i) and (ii) was modified to clarify the timing of status assignment.

Comment. A representative of TASB stated there is a lack of alignment between the state and federal accountability systems and sanctions, and cited the lack of explicit acknowledgement in the proposed rules of the sanctions related to the No Child Left Behind (NCLB) Act. The commenter recommended that the rules include an explanation of federal as well as state sanctions that may apply under the circumstances, citing proposed §97.1055(b), (c), and (d).

Agency Response. The agency disagrees. These rules implement HB 1. The identification procedures for adequate yearly progress under the NCLB are adopted in rule under 19 TAC Chapter 97, Subchapter AA, §97.1004, Adequate Yearly Progress. The State of Texas is in full compliance with the accountability provisions required by federal law. The agency has an independent obligation to implement HB 1. A single set of rules cannot be adopted that fully implements the spirit and intent of both Congress and the Texas Legislature.

Comment. An administrator commented that under provisions of proposed §97.1055(b)(2)(B)(i), determination of accreditation status may be based on the district's performance in the Performance-Based Monitoring Analysis System (PBMAS), expressed concern about the use of comparative data in the structure of the PBMAS, and stated that inclusion of the PBMAS could result in accreditation sanctions based on a measure that may not be a meaningful indicator of a district's effectiveness in serving special populations.

Agency Response. The agency disagrees. Under §97.1055(b)(2)(B), (c)(2)(B), and (d)(2)(B), the agency must make findings after a special accreditation or other investigation that the district's programs for special populations are ineffective. No accreditation sanction may be imposed under these rules based exclusively on data analyzed through PBMAS.

Comment. A representative of TSTA stated that there is an unintended inconsistency in the use of the PEIMS as the performance evaluation tool for proposed §97.1055(b)(2)(A)(ii) and the use of the PBMAS in proposed §97.1071(a).

Agency Response. The agency disagrees. The use of the PEIMS in §97.1055(b)(2)(A)(ii) and the use of data for performance-based monitoring (PBM) staging in §97.1071(a) are not contradictory. The first is intended to meet the requirements of TEC, §39.071(b)(2)(A)(i). The second is intended to meet the requirements of TEC, §39.071(b)(2)(B) and (C). These are entirely different functions. Section 97.1055(b)(2)(A)(ii) holds the district accountable for the accuracy of its data reporting. Section 97.1071(a) holds the district accountable for the effectiveness of its programs for special populations and career and technical education.

Comment. Concerning proposed §97.1055(b)(2)(A), a representative of TCTA stated subparagraph (A) does not mention some items required in statutory language such as special populations and career and technology programs, and maintained that the agency is exercising its statutory authority to add or subtract factors from the statutory list. The commenter requested that the agency expand on the factor regarding "any applicable requirements under TEC, Section 7.056(e)(3)(C) - (I)" and add TEC, §7.056(e)(3)(J), to the list of factors that result in an assignment of Accredited-Warned status. Furthermore the organization asked the proposed language in §97.1055(b)(2)(A)(v) be changed as follows: "any applicable requirement under TEC, Section 7.056(e)(3)(C-I, J)."

Agency Response. The agency disagrees. The reference to TEC, §7.056(e)(3)(C) - (I), in the rule is in alignment with the statute. Additionally, the statute references the effectiveness of special populations at TEC, §39.071(b)(2)(B), and the effectiveness of career and technical programs at TEC, §39.071(b)(2)(C). TEC, §39.071(b)(2)(A)(iii), limits the agency to "an item listed under Sections 7.056(e)(3)(C) - (I) that applies to the district." The legislature specifically excluded TEC, §7.056(e)(3)(J), from consideration.

Comment. Concerning proposed §97.1055(b)(1), a representative of ACE asked if the rating assigned for the 2007 school year is "year one" for the two consecutive years discussed and expressed concern that former year ratings will be used for accreditation determinations. The commenter stated that HB 1 does not mandate an accreditation status based on a retroactive application of accountability or financial ratings and requested that the 2007 school year rating be considered the base line year for evaluating new accreditation standards.

Agency Response. The agency disagrees. The rating assigned a district in August 2006 counts toward the consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). In response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of ratings used for the determination of an accreditation status from 2007 to 2006. In addition, although ratings from 2006 forward will generally be considered for purposes of counting the number of years of performance identified in §97.1055, ratings and other performance indicators from earlier years are a relevant consideration. See §97.1053(b). For example, under §97.1055(b)(3), (c)(3), and (d)(3), the commissioner may consider the ratings history of the district in addition to the factors identified by §97.1055(b)(1), (c)(1), and (d)(1). In addition, §97.1055(a) was modified to add new paragraph (6) to establish that when necessary to achieve the purposes of §97.1053, the commissioner may withhold the release of an accreditation status pending investigation. This may be especially important in transitioning to the new system. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(b)(1)(A), two individuals from the Texas Institute for Education Reform stated that the proposed rule allows a district to receive Academically Unacceptable ratings for two more consecutive years after 2007 before being awarded an Accreditation-Warned status. The commenters requested the rule be changed to warn the district the first year that accreditation statuses are assigned.

Agency Response. The agency agrees and has modified the proposed rules in several respects. In response to public comments, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of ratings used for the determination of an accreditation status from 2007 to 2006. Ratings assigned a district in August 2006 count toward the two consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). Although ratings from 2006 forward will generally be considered for purposes of counting the number of years of performance identified in §97.1055, ratings and other performance indicators from earlier years are expressly made a relevant consideration under §97.1053(b). Under §97.1055(b)(3), (c)(3), and (d)(3), the commissioner may consider the ratings history of the district in addition to (or in lieu of) the factors identified by §97.1055(b)(1), (c)(1), and (d)(1). In addition, §97.1055(a) was modified to add new paragraph (6) to establish that when necessary to achieve the purposes of §97.1053, the commissioner may also withhold the release of an accreditation status pending investigation.

Comment. Concerning proposed §97.1055(b)(1)(A) and (B), an individual asked that financial and academic performance be separately considered when determining an accreditation status.

Agency Response. The agency disagrees. TEC, §39.071(b)(1), requires evaluation of both the academic and the financial performance of the district in determination of its accreditation status.

Comment. Concerning proposed §97.1055(b)(2), related to the assignment of Accredited-Warned status, a representative of ACE suggested "shall be assigned" should be changed to "may be assigned." The commenter stated mandatory language for consideration of an accreditation status relates to financial and academic performance, and consideration of the list of items in proposed §97.1055(c)(2)(A) and (B) is optional. The commenter requested that the rules be written to reflect that these are options that a commissioner may consider. Should the commissioner decide that accreditation sanctions are appropriate under this section the commenter requested that a phase-in process be followed for Accreditation-Warned, Accreditation-Probation, and Accreditation-Revoked statuses.

Agency Response. The agency disagrees. The adopted rules provide notice that the commissioner intends to exercise authority to consider other issues identified in statute, and a phased timeline is built into the rules. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(b)(3), a representative of ACE requested "shall be assigned" be changed to "may be assigned," stating that the only mandatory language for accreditation rating relates to financial and academic performance. The commenter expressed concern with the list of items in proposed §97.1055(b)(2)(A) and (B) and requested the rule be written to allow discretionary consideration by the commissioner.

Agency Response. The agency disagrees. The adopted rule provides notice that the commissioner intends to exercise authority to consider other issues identified in statute. These rules provide a framework for commissioner consideration when determining sanctions and the wording of §97.1055(b)(3) includes language stating ". . . shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071." However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(b) - (d), a board of trustees representative questioned the reasoning behind an accreditation status decision being based solely on the number of years a rating has been assigned and suggested the use of other qualitative factors, including the margin by which the district missed the criterion, the number and repetitive nature of the standards not met, the continuing pattern of low performance, and whether the district is improving relative to the standards. The commenter suggested that subsections (b) - (d) be deleted and replaced with other factors that accurately reflect the differences between districts that do and do not show promise of success in the future.

Agency Response. The agency disagrees. The purpose of the adopted rule is to implement the required assignment of accreditation statuses in accordance with state statutes. Other issues regarding qualitative factors addressed in the comment are related to the accountability rating system, which is not addressed in the adoption of 19 TAC Chapter 97, Subchapter EE.

Comment. Concerning proposed §97.1055(c)(1), a representative of ACE is unclear whether the rating assigned for the 2007 school year is "year one" for three consecutive years or whether the agency is applying former year ratings. Also the commenter stated that accreditation determination is reasonable if the 2007 school year rating is the base line year for evaluating accreditation.

Agency Response. The agency offers the following clarification. The rating assigned a district in August 2006 counts toward the consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). As initially proposed, the rules package reflected a start

date of 2007 as it relates to the initial year of ratings to be considered in the assignment of an accreditation status to a district; however, in response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of ratings used for determination of accreditation status from 2007 to 2006. This change is in alignment with the date of passage of HB 1, 79th Texas Legislature, Third Called Session, in 2006. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. A representative of the Texas Association of Business stated his concern that the proposed rules would not consider accountability ratings issued before 2007 and requested the agency consider performance in past school years when evaluating a school district's performance, maintaining that this would create a sense of urgency to improve rather than to procrastinate. The commenter suggested TEA reconsider revisions for 19 TAC Chapter 97, Subchapter EE.

Agency Response. The agency agrees. In response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of accountability ratings used for determination of accreditation status from 2007 to 2006. This reflects the date of passage of HB 1, 79th Texas Legislature, Third Called Session, in 2006.

Comment. A CEO and founder of a charter school asked why the State Board of Education (SBOE) charter drop out recovery high schools are required to use the TAKS test at the socially promoted grade at the same grade level on the student's transcript if a student is functioning below that grade level. The commenter requested that the eighth grade TAKS release test be administered to every student entering a charter drop out recovery high school.

Agency Response. The agency cannot address this comment. The comment addresses topics that are not part of this adoption. The SBOE has not adopted the designation referenced by the commenter, but in 1997 the legislature did enact TEC, §12.1011. This provision created a type of charter school promising that at least 75% of its student population would be at risk of dropping out of school as defined by TEC, §29.081. The legislature abolished this distinction in 2001, but some charter schools operating now were granted under TEC, §12.1011. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. A CEO and founder of a charter school asked why charter schools are paid less than other public schools per average daily attendance, why schools chartered to recover dropouts are not given additional resources, and what plans the agency has to create facility funding for all public charter schools and special funding for the SBOE schools authorized to recover school dropouts.

Agency Response. The agency cannot address this comment. The comment addresses topics that are not part of this adoption. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(d)(1)(D), a representative of ACE stated that the proposed rule revoking a school's accreditation on the basis of three years of financial or academic performance, or a combination of the two, does not provide a fair opportunity to correct a problem and proposed the use of a "growth model." The commenter stated that an accreditation system should provide consideration for schools serving a majority of at-risk students, that academic and financial accountability systems are quite different and should not be considered together, and that proposed §97.1055(d)(1)(D), related to the assignment of Accredited-Warned status, is harsh because it does not provide adequate time for improvement. The commenter stated that unacceptable ratings for two separate categories in the same year do not mean a school has a pattern of unacceptability in either of the standards.

Agency Response. The agency disagrees. The purpose of the adopted rule is to implement the accreditation process required under TEC, §39.071, which mandates consideration of both academic and financial accountability ratings. The agency finds that, because the timeline for determination of accreditation status requires multiple years of unacceptable performance, it provides sufficient time for districts to exhibit improvement, and the timeline is appropriate within the context of the intent of HB 1, 79th Texas Legislature, Third Called Session. The other issues raised by the commenter are related to the determination of accountability ratings, which these rules do not address. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(c)(1), related to the determination of Accredited-Probation status, a representative of ACE stated that the three-year approach in proposed §97.1055(c)(1)(A) and (B) allows schools to improve or demonstrate that the first two years of low ratings were not an aberration. The commenter further stated that basing a school's Accredited-Probation status on two years of financial or academic performance as is referenced in proposed §97.1055(c)(1)(C) or a combination of the two as is referenced in proposed §97.1055(c)(1)(D) is not fair because there is a limited opportunity to correct a problem if two separate categories occur during the same years and may not mean a school has a pattern of unacceptability in either of the standards.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees that the three-year approach referenced in §97.1055(c)(1)(A) and (B) provides sufficient time for improvement before the assignment of an Accredited-Probation status. However, the agency finds that the timeline for accreditation status determinations under §97.1055(c)(1)(C) and (D) is appropriate within the context of the intent of HB 1, 79th Texas Legislature, Third Called Session. The agency has considered the fact that the accumulation of several unrelated performance failures does not demonstrate the persistence of a particular performance weakness over time. However, the accumulation of several unrelated performance failures may demonstrate a management weakness that is an appropriate consideration when determining the accreditation status. For example, a district with severe academic deficits in student performance that also demonstrates severe financial deficits may require a lowered accreditation status. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(c), two individuals from the Texas Institute for Education Reform stated the district may have Academically Unacceptable ratings for three consecutive years after 2007 before probation, noting that HB 1 was enacted in 2006. The commenters stated probation may not occur until the August 2010 ratings and under proposed §97.1055(a)(5), ratings appeals will delay the probationary status until January 2011. The commenters stated that this is not what the legislature intended and requested the rule be changed to assign probation status to districts in the first year accreditation statuses are assigned.

Agency Response. The agency agrees in part and has modified the proposed rules in several respects. In response to public comments, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of ratings used for the determination of an accreditation status from 2007 to 2006. Ratings assigned a district in August 2006 count toward the two consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). Although ratings from 2006 forward will generally be considered for purposes of counting the number of years of performance identified in §97.1055, ratings and other performance indicators from earlier years are expressly made a relevant consideration under §97.1053(b). Under §97.1055(b)(3), (c)(3), and (d)(3), the commissioner may consider the ratings history of the district in addition to (or in lieu of) the factors identified by §97.1055(b)(1), (c)(1), and (d)(1). In addition, §97.1055(a) was modified to add new paragraph (6) to establish that when necessary to achieve the purposes of §97.1053, the commissioner may also withhold the release of an accreditation status pending investigation.

Comment. Concerning proposed §97.1055(d)(1), a representative of ACE asked if the rating assigned for the 2007 school year is "year one" for the three consecutive years and recommended that the 2007 school year rating be considered the base line year for evaluating accreditation.

Agency Response. The agency disagrees with the recommendation. The rating assigned a district in August 2006 counts toward the consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). In response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of accountability ratings used for the determination of accreditation status from 2007 to 2006. This change is in alignment with the date of passage of HB 1, 79th Texas Legislature, Third Called Session, in 2006. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(d), two individuals from the Texas Institute of Education Reform stated that, under the proposed rules, the earliest a district could be closed under HB 1 is the school year following the August 2011 ratings. The commenters further stated that proposed §97.1055(a)(5), regarding the withholding of an accreditation status pending the completion of certain appeals or reviews, would delay closure and noted that the timeline would again be impacted by an appeal to SOAH of the closure decision under proposed §157.1151. The commenters stated that the legislature did not intend to delay the potential closing of a district until 2011-2012 and a school may start that school year before a decision was reached. The commenters recommended the rule be changed so that a district that has consistently failed its students could be closed the first year accreditation statuses are assigned.

Agency Response. The agency agrees and has modified the proposed rules in several respects. In response to public comments regarding districts with a history of low performance, §97.1053(b) and §97.1055(b)(1), (c)(1), and (d)(1) were modified to move the initial year of ratings used for the determination of an accreditation status from 2007 to 2006. Ratings assigned a district in August 2006 count toward the two consecutive years mentioned in §97.1055(b)(1), (c)(1), and (d)(1). Although ratings from 2006 forward will generally be considered for purposes of counting the number of years of performance identified in §97.1055, ratings and other performance indicators from earlier years are expressly made a relevant consideration under §97.1053(b). Under §97.1055(b)(3), (c)(3), and (d)(3), the commissioner may consider the ratings history of the district in addition to (or in lieu of) the factors identified by §97.1055(b)(1), (c)(1) and (d)(1). In addition, §97.1055(a) was modified to add new paragraph (6) to establish that when necessary to achieve the purposes of §97.1053, the commissioner may also withhold the release of an accreditation status pending investigation.

Comment. Concerning proposed §97.1055(e), related to legal compliance, a representative of ACE stated that if the commissioner decides that accreditation sanctions are appropriate to address issues related to legal compliance, those sanctions should follow a similar phase in process as that for assignment of Accreditation-Warned, Accreditation-Probation, and Accreditation-Revoked, allowing two or three years for corrective actions to be effective.

Agency Response. The agency disagrees. It is inappropriate to allow continued noncompliance with legal requirements for any period of time. In some instances, corrective action may require some time to have full effect, but in many instances compliance may be achieved without delay. The agency has limited authority to allow continued noncompliance with the law. The adopted rules allow the commissioner to address legal noncompliance in accordance with state and federal requirements. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §97.1055(b)(2), (c)(2), and (d)(2), a representative of TCTA requested a change to add TEC, §7.056(e)(3)(J), to the list of factors that result in an assignment of Accredited-Warned status and Accredited-Probation status.

Agency Response. The agency disagrees. TEC, §39.071(b)(2)(A)(iii), limits the agency to "an item listed under TEC, §7.056(e)(3)(C) - (I), that applies to the district." The legislature specifically excluded TEC, §7.056(e)(3)(J), from consideration. The adopted rules are in alignment with the language of the statute.

Comment. Concerning proposed §97.1055(f)(3)(C), a representative of ACE stated charter schools are not taxing entities and have no property owners in their district, and requested proposed §97.1055(f)(3)(C) be revised so charters are only required to provide notice to parents.

Agency Response. The agency disagrees. Notification of parents and taxpayers is required by TEC, §39.071(d). Section 97.1055(f)(3) provides options for public notification of parents and taxpayers, including posting on its website and publishing notice in newspapers. Section 97.1055(f)(3)(C), mailing the notices by first class mail, is the final option. Should this method

be chosen, the charter school can access tax rolls for contact information for taxpayers residing within its approved boundaries. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

§97.1055, Accreditation Status, and §97.1059, Standards for All Accreditation Sanction Determinations

Comment. Concerning proposed §97.1055 and §97.1059, a representative of ATPE suggested that the rapid timeline and severe consequences of the proposed rules call for a review of procedures for identifying Academically Unacceptable campuses for sanctions. The commenter stated that identification must focus on specific persistent deficiencies and provide timelines that allow interventions to demonstrate success.

Agency Response. The agency disagrees. To the extent that this comment is about identification procedures for ratings, those standards and procedures are adopted in rule under 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System, and are not a part of this adoption. To the extent that this comment is about selecting districts and campuses for accreditation sanctions, the new rules adopted in 19 TAC Chapter 97, Subchapter EE, focus on the factors suggested by the commenter, among others. See §97.1059(b) and §97.1057.

§97.1057, Accreditation Sanctions

Comment. Concerning proposed §97.1057, the superintendent of a school stated proposed §97.1057 provides significant power to the commissioner and that the proposed rules should provide more direction regarding what the commissioner may do in any and all circumstances.

Agency Response. The agency disagrees. The language of HB 1, 79th Texas Legislature, Third Called Session, as codified in TEC, Chapter 39, Subchapter G, Accreditation Sanctions, provides broad discretion to the commissioner in the determination of sanctions. The adopted rules provide a framework for decision-making by the commissioner but are not intended to limit the discretion of the commissioner to fashion appropriate interventions and sanctions in the interest of achieving the purposes stated in §97.1053.

Comment. Concerning proposed §97.1057, a superintendent of a school asked whether the accreditation system would replace any other accountability system.

Agency Response. No. The system for assigning accreditation statuses is established by the provisions of HB 1, 79th Texas Legislature, Third Called Session, but this legislation does not amend any other accountability provisions in state statute.

Comment. Concerning proposed §97.1057(d), a member of a board of trustees commented that the rule states that the commissioner may impose "on the district" any other sanction and asked for clarification regarding whether the commissioner can impose sanctions on a campus as well as a district.

Agency Response. The agency agrees. In response to public comment, §97.1057(d) was modified to clarify that the commissioner can impose sanctions on a campus as well as a district.

Comment. Concerning proposed §97.1057(e)(3), a member of a board of trustees requested clarification of whether the TEA could impose a monitor, require technical assistance, or otherwise impose an accreditation sanction in response to a severe problem in student attendance accounting unless it finds deliberate falsification in the attendance data. The commenter stated that this is a change in agency policy.

Agency Response. The agency agrees. The commissioner is directed by statute to impose accreditation sanctions as necessary to achieve the purposes listed in §97.1053. It is inconsistent with this statute to adopt a rule that would limit appropriate corrective action to those rare cases in which intentional misconduct has been identified as causing the accreditation deficiency. This was not the intent of the proposed rule. In response to public comment, §97.1057(e)(3) was modified to clarify that the commissioner can impose sanctions as necessary to achieve the purposes listed in §97.1053.

Comment. Concerning proposed §97.1057(e)(3), a representative of ACE requested that the agency clarify that "false" information relates to incorrect information submitted in bad faith or with the intent to mislead.

Agency Response. The agency disagrees. The commissioner is directed by statute to impose accreditation sanctions as necessary to achieve the purposes listed in §97.1053. It is inconsistent with this statute to adopt a rule that would limit appropriate corrective action to those rare cases in which intentional misconduct has been identified as causing the accreditation deficiency. This was not the intent of the proposed rule. In response to public comment, §97.1057(e)(3) was modified to clarify that the commissioner can impose sanctions as necessary to achieve the purposes listed in §97.1053.

§97.1059, Standards for All Accreditation Sanction Determinations

Comment. Concerning proposed §97.1059(b)(1)(A), two individuals from the Texas Institute for Education Reform stated the rule implementation should be underway and the timing of Academically Unacceptable district and campus statuses should be implemented in the "current year" as the law requires.

Agency Response. The agency agrees. Even while it has been working on formal rules, the agency has already implemented many of the provisions enacted in HB 1. An accreditation status will be issued to each school district for the first time in 2007, but in other respects the implementation of the statute began shortly after passage of the bill.

§97.1059, Standards for All Accreditation Sanction Determinations, and §97.1063, Campus Intervention Team; Reconstitution

Comment. Concerning proposed §97.1059 and §97.1063(c), a representative of ATPE suggested that sanctioning a school and requiring reconstitution because the school failed to meet different standards in different content areas over two years does not serve the purpose of encouraging schools to improve performance and address specific deficiencies.

Agency Response. The agency disagrees. To the extent that this comment is about identification procedures for ratings, those standards and procedures are adopted in rule under 19 TAC Chapter 97, Subchapter AA, §97.1001, Accountability Rating System, and is not part of this adoption. To the extent that this comment is about selecting districts and campuses for accreditation sanctions, the new rules adopted in 19 TAC Chapter 97, Subchapter EE, do indeed serve the purpose of encouraging schools to improve performance and addressing specific deficiencies. See §97.1059(b) and §97.1057. The commissioner

will implement sanctions to achieve the purposes identified in §97.1053.

Comment. Concerning proposed §97.1059 and §97.1063(c), a representative of ATPE stated that the *Accountability Manual* acknowledges the primary concern of persistent failure in its treatment of exceptions, and the federal adequate yearly progress calculations adhere to the "same measure" standard. The commenter stated that aligning the two systems would provide greater consistency and allow educators and communities adequate opportunities and sufficient flexibility to address specific accountability measures before accelerating implementation of sanctions.

Agency Response. The agency disagrees. To the extent that this comment is about identification procedures for ratings or adequate yearly progress, those standards and procedures are adopted in rule under 19 TAC Chapter 97, Subchapter AA, §97.1001, Accountability Rating System, and §97.1004, Adequate Yearly Progress, and are not a part of this adoption. To the extent that this comment is about selecting districts and campuses for accreditation sanctions, the new rules adopted in 19 TAC Chapter 97, Subchapter EE, provide adequate opportunities and sufficient flexibility to address specific accountability measures before accelerating implementation of sanctions. See §97.1059(b) and §97.1057. The commissioner will implement sanctions to achieve the purposes identified in §97.1053. The State of Texas has adopted and is in full compliance with the accountability provisions required by federal law; however, the agency has an independent obligation to implement rules in compliance with HB 1, enacted by the Texas Legislature. Where feasible, the two systems may be harmonized, but they are sufficiently distinct that a single set of rules cannot be adopted that fully implements the spirit and intent of both legislative bodies.

§97.1061, Technical Assistance Team Campuses

Comment. Concerning proposed §97.1061, a representative of ACE requested that language be revised for charters to allow participation from other sources because charter schools are not mandated to have site-based decision-making committees.

Agency Response. The agency agrees in part and disagrees in part. While the agency agrees that charter schools are not required to have site-based decision-making committees, language in subsection (d) specifies the minimum foundation for members but does not preclude participation from other sources.

Comment. Concerning proposed §97.1061, an individual commented on fraudulent activities on a campus and suggested types of members for the technical assistance teams.

Agency Response. The agency disagrees. Under TEC, §39.1322(a), Technical Assistance Team and Campus Intervention, technical assistance teams are assigned due to student performance concerns and do not investigate fraud. The comment does not apply to this rule.

Comment. An individual who serves as an external member of five campus intervention teams (CIT) commented that the proposed §97.1061 states that the commissioner will annually assign a technical assistance team (TAT) if that campus would be rated Academically Unacceptable by using the accountability standards for the subsequent year. The commenter noted that TEC, §39.1322, states that the commissioner shall appoint a CIT if a campus is rated Academically Unacceptable, and under TEC, §39.1323(e), the CIT will continue to serve until the campus has been rated Academically Acceptable for a two-year period. The commenter suggested that a campus assigned a CIT could also have a TAT assigned under proposed new §97.1061(a) and suggested this would be confusing and needlessly duplicative. The commenter requested this section of the rules be clarified.

Agency Response. The agency agrees. In response to public comment, §97.1061 was modified by adding subsection (f) to clarify that a CIT will serve the required term, and a TAT will not be assigned under certain circumstances in which a CIT continues to play a role on the campus. The campus would still be included on the list of campuses that require a TAT, but the CIT would meet this requirement.

Comment. Concerning proposed §97.1061(c), a representative of TCTA expressed concern that members of the campus and district planning committees would be members of the TAT; requested other alternatives for the additional member of the TAT, including possibly personnel from a regional education service center; and suggested deleting the provision of the proposed rules that campus and district planning team members be included.

Agency Response. The agency disagrees. Campuses that are assigned a TAT are rated Academically Acceptable. The proposed rules provide for the involvement of key campus and district personnel in the improvement planning process and require the inclusion of a member not assigned to the campus who has the knowledge and ability to provide technical assistance in the problem area(s). The adopted rules do not preclude a district or campus adding other members to the TAT.

§97.1063, Campus Intervention Team; Reconstitution

Comment. Concerning proposed §97.1063, an administrator stated that the rule allows the commissioner to assign members of the CIT if the district recommendations are rejected and also to order reconstitution if the school district does not implement the school improvement plan. The commenter recommended that the rule allow the district to appeal the commissioner's decision or allow for the submission of a second recommendation of CIT members. The commenter recommended a minimum timeline that clearly states how long a school has to develop the school improvement plan before the commissioner can call for the reconstitution of the campus. The commenter requested clarification of the referenced two-year period that governs the removal of a principal in an Academically Unacceptable school.

Agency Response. The agency disagrees. TEC, §39.1322(b), states that the commissioner shall appoint a CIT when a campus is rated Academically Unacceptable. Section 97.1063 allows the district to recommend CIT members, but states that the commissioner shall assign a CIT should the district fail to make recommendations or recommend persons that are not approved. The rule provides guidance as to the necessary qualifications of CIT members and permits the district to propose members with the necessary qualifications. Agency practice is to allow a campus to make a second proposal should a proposed member not be approved. Regarding the recommendation that a minimum timeline be established defining how long the school has to develop and implement a school improvement plan before the commissioner can call for reconstitution, the agency takes into account the progress of the campus in implementing the improvement plan and recommendations over the course of the year. Regarding clarification of the two-year period that governs the removal of a principal from an Academically Unacceptable school, the amended language at TEC, §39.116, from the 80th legislature

requires the district to make the decision regarding retention of the principal.

Comment. Concerning proposed §97.1063(d) and (e), two individuals from the Texas Institute Education Reform referenced TEC, §39.1324(b), regarding the retention of a principal on a campus that has been rated Academically Unacceptable for two consecutive years. The commenters stated this is in reference to campus closure and indicated the legislature intended campus closure to begin under HB 1 with the 2006-2007 school year. The commenters requested the rule be changed to ensure campus closure be effective immediately upon rule adoption.

Agency Response. The agency agrees in part and disagrees in part. The language of TEC, §39.1324(b), is in reference to campus reconstitution, not campus closure. The agency has been implementing sanctions related to campus performance issues since before the passage of HB 1. While the intent of the legislation may have been to begin closure in 2006-2007, there were no eligible campuses that were not also eligible for other sanctions or interventions required under HB 1.

Comment. Concerning proposed §97.1063, a representative of TCTA commented there may have been an error in proposed §97.1063(a)(2), in that it refers to districts implementing the school improvement plan or the recommendation of the CIT, instead of campuses. The commenter stated the language goes beyond what is required by law making it mandatory for the commissioner to order reconstitution of the campus under TEC, §39.1322(b), if the commissioner determines that CIT recommendations or a school improvement plan is not fully implemented. The commenter recommended tracking statutory language and leaving it within the commissioner's discretion whether to order reconstitution by changing "shall" to "may."

Agency Response. The agency agrees that the reference in §97.1063(a)(2) should be changed to campuses. In response to public comment, §97.1063(a)(2) has been modified to change "district" to "campus." In regard to campus reconstitution the agency agrees that the commissioner has discretion as to whether to order the reconstitution of the campus; however, the adopted rule puts districts on notice that the commissioner will exercise the authority to order the reconstitution of the campus under the circumstances described.

Comment. Concerning proposed §97.1063(a), a representative of TASB stated the requirements of proposed §97.1063(a)(1) allow the district to recommend CIT members; however, the rule does not specify any procedure if the commissioner refuses the district's recommendation. The commenter stated the rule does not specify that any district personnel must serve on the CIT, but NCLB requires the district to provide technical assistance to a campus that has been identified for school improvement. The commenter recommended if the commissioner refuses the district's recommendation of CIT members, the rule should be amended to state the district's recommendation of CIT members must include district personnel in accordance with federal law.

Agency Response. The agency disagrees. The rule addresses the requirements of HB 1, 79th Texas Legislature, Third Called Session. The accountability system and interventions associated with NCLB are a federal mandate and not the subject of these adopted rules.

Comment. Concerning proposed §97.1063(a)(2), a representative of TASB expressed their concern that the term "recommendation" is used throughout the rules, but the consequence for not accepting the recommendation is a stiffer penalty, citing examples in proposed §97.1063(a)(2) and (e) and proposed §97.1067(c)(1). The commenter recommended replacing "recommendation" with "mandate" or "order."

Agency Response. The agency disagrees. The adopted rules track the language of the applicable statute, TEC, §39.1324.

Comment. Concerning proposed §97.1063(a), a representative of ATPE stated the qualifications, training, and expectations for CIT members is absent from the proposed rules. The commenter stated the proposed rules fail to deal directly with all of the uncertainties surrounding qualifications and accountability for the CIT. The commenter stated guidance materials provided by TEA for the CIT are helpful yet insufficient and recommended current guidelines be more detailed regarding expectations and accountability and that those guidelines be provided through administrative rule.

Agency Response. The agency appreciates the comments regarding the guidance materials but disagrees that administrative rules are needed. The agency will continue to expand its guidance materials as the rule is implemented and this will allow for further development as the agency learns from those experiences.

Comment. Concerning proposed §97.1063(c)(1)(A) and (D), a representative of TCTA requested language be added to clarify that the CIT does not have the authority to decide whether an educator is retained as an employee of the district, nor the authority to decide the new assignment of any educator not retained at the reconstituted campus. The commenter cited relevant sections of the TEC assigning employment decisions to the board of trustees and requested proposed §97.1063(c)(1) be revised by rearranging it so the provision in subparagraph (D) immediately follows subparagraph (A), which would clarify that reassignment within the district is an option if the CIT does not recommend retention of an educator.

Agency Response. The agency disagrees. The adopted rule mirrors the language of the statute, TEC, §39.1324. Section 97.1063(c)(1)(A), (C), and (D) track the law.

Comment. Concerning proposed §97.1063, a representative of TASB stated proposed §97.1063(c)(3) and (e) authorize the commissioner to impose stiffer sanctions if a campus fails to implement the school improvement and reconstitution plan. The commenter stated the proposed rule provides no timeline and fails to reference any timeline in the plan. The commenter recommended the rule should require a school improvement and reconstitution plan to specify a timeline for full implementation and should state "within the timeline specified in the plan."

Agency Response. The agency disagrees in part and agrees in part. The language mirrors the statute at TEC, §39.1323(f) and §39.1324(d), which authorize the sanctions described in the rule; however, in response to public comment, §97.1063(e) was modified to clarify that the commissioner will order alternative management when such order is needed to achieve the purposes listed in §97.1053.

Comment. Concerning proposed §97.1063(c)(1)(B), a representative of ATPE stated the rule does little to clarify how language such as a "pattern of significant academic improvement" will be determined by the CIT, which may likely result in inconsistent or unfair application of the reconstitution. The commenter stated the proposed §97.1063(c)(1)(B) is a mere recitation of TEC, §39.1324(b), and asked for additional guidance to ensure equitable implementation. The commenter recommended the

proposed rule and accompanying guidance materials be modified to include at minimum standards for determination of removal or reassignment.

Agency Response. The agency disagrees. Section 97.1063(c)(1)(B) requires the district to make the determination as to whether to retain the principal, in accordance with the requirements of TEC, §39.116.

§97.1063, Campus Intervention Team; Reconstitution, and §97.1065, Campus Closure or Alternative Management

Comment. Concerning proposed §97.1063(e) and §97.1065(a)(2), a representative of TCTA stated the proposed language goes beyond what is required by law by making it mandatory for the commissioner to order alternative management or campus closure when the campus has failed to implement recommendations of the CIT or terms of the school improvement and reconstitution plan. The commenter stated the law only requires the commissioner to order the closure of a campus or pursue alternative management if the campus is considered Academically Unacceptable for two consecutive school years after the campus is reconstituted under TEC, §39.1324(f). The commenter stated both alternative management and closure are drastic measures and recommended tracking statutory language and leaving these decisions within the commissioner's discretion by changing "shall" to "may" and deleting proposed §97.1065(a)(2).

Agency Response. The agency agrees in part. The adopted rules provide notice that the commissioner has exercised the authority to order closure or pursue alternative management when a campus fails to implement the improvement plan or recommendations of the CIT. However, in response to public comment, §97.1063(e) was modified to clarify that the commissioner shall issue such order only if it is needed to achieve the purposes listed in §97.1053.

Comment. Concerning proposed §97.1063 and §97.1065, two individuals from the Texas Institute for Education Reform stated that proposed §97.1063 requires the first campus to be reconstituted after the second consecutive Academically Unacceptable rating following the August 2007 ratings, or January 2010 after a ratings appeal. Proposed §97.1063(c)(1) permits the district to plan its campus reconstitution that year, so reconstitution actually occurs in fall 2010. The commenters concluded that proposed §97.1065(a)(1) requires the first order of alternative management only after the campus receives two consecutive Academically Unacceptable ratings after reconstitution, or fall 2010. Such order can be imposed only after an appeal of the second Academically Unacceptable rating, which would be issued in August 2012. This means that, at the earliest, the commissioner can order alternative management in January 2012. The commenters ask whether it is reasonable, at that late date, for the commissioner to wait another three years, as referenced in proposed §97.1065(c)(1), until 2015 for a reasonable expectation that the campus will achieve acceptable ratings performance.

Agency Response. The agency disagrees. Campuses may be assigned alternative management in the first year of the new rules. Ratings and accreditation sanctions from years prior to 2006 are to be considered under §97.1053(b). A campus that was reconstituted by commissioner action in 2005 or 2006, and that has subsequently received two consecutive Academically Unacceptable ratings, must be alternatively managed or closed. The commissioner may waive this requirement under §97.1065(d), but is bound by TEC, §39.1324(f), with respect to such campus.

Rating and sanction appeals are provided by TEC, §39.301 and §39.302, but the rules require all decisions to be final and effective well before the start of the following school year. The district is required to negotiate a contract with its alternative management service provider while the sanction is on substantial evidence review at SOAH. This enables the sanction to be implemented in a timely fashion.

The agency has carefully considered the criteria for selecting between the statutorily imposed options of closure and alternative management. A campus in need of intervention under §97.1065 has a history of intractable performance deficiencies. In TEC, §39.1327(h), the legislature set the expectation that an alternative management service provider demonstrate progress in each of its first two years of service. The contractor must demonstrate improvement "as negotiated under the contract" in the first year. The performance measures negotiated in the contract "must be consistent with the priorities of" TEC, Chapter 39. By the second anniversary the contractor is required to demonstrate "significant improvement, as determined by the commissioner." In both the first and second year of contract performance, TEC, §39.1327(h), requires improvement but expressly contemplates improved performance that might still fall below state standards. In most instances, the standards applied by the commissioner under TEC, §39.1327(h), should be those in the applicable *Accountability Manual*. However, within three rating cycles of assignment, the alternative management service provide must meet all standards in the *Manual*. If the commissioner does not have a reasonable expectation that ordering alternative management will produce this result, the commissioner must order the campus closed.

§97.1065, Campus Closure or Alternative Management

Comment. Concerning proposed §97.1065(b), a representative of a school district expressed concern that the proposed rules may impose financial hardships on school districts due to their limited ability to raise additional funds to pay for professional services and recommended a "cap" be set on the cost of professional services ordered by the commissioner.

Agency Response. The agency disagrees. TEC, §39.1331, does not authorize the proposed cap. Rather, TEC, §39.134, provides that the cost of professional services shall be paid by the district. As indicated by §97.1057(e), the commissioner will consider the costs and logistical concerns of the district when ordering professional services under §97.1065(b), but shall give primary consideration to the best interest of the district's students.

Comment. Concerning proposed §97.1065, two individuals from the Texas Institute for Education Reform stated the rule implementation should be underway. The timing of Academically Unacceptable district and campus statuses should be implemented in the "current year" as the law requires.

Agency Response. The agency agrees. Even while it has been working on formal rules, the agency has already implemented many of the provisions enacted in HB 1. An accreditation status will be issued to each school district for the first time in 2007, but in other respects the implementation of the statute began shortly after passage of the bill.

Comment. Concerning proposed §97.1065(c)(1), a member of a board of trustees stated the proposed rule fails to state how the

commissioner will determine whether to close a campus or order alternative management. The commenter requested the rule be changed to define the factors the commissioner will use to determine whether alternative management has a "reasonable expectation" of producing an Academically Acceptable rating. The commenter also requested the rule spell out the factors that will lead to the closure of the campus and the factors that will permit a second chance.

Agency Response. The agency disagrees. The adopted rule provides a framework for consideration of the commissioner in making determinations regarding campus closure or alternative management, in accordance with the requirements of TEC, §39.1324.

Comment. Concerning proposed §97.1065(e), a member of a board of trustees stated that proposed §97.1065(e)(1) is not clear and asked for an explanation.

Agency Response. The agency disagrees and finds that the language is sufficiently clear if §97.1065(e)(1) is read in the context of §97.1065 as a whole. If the commissioner is required to act under §97.1065(a), but may not choose alternative management under §97.1065(c) (and thus may not waive alternative management under §97.1065(d)), then the commissioner must close the campus under §97.1065(e)(1).

Comment. Concerning proposed §97.1065(e), five charter school administrators expressed concern that the proposed rules do not provide fair opportunity nor constitutionally adequate due process to charter holders when the action under consideration is the closing of a campus or school due to the rating or financial status.

Agency Response. The agency disagrees. TEC, §39.302, provides both a fair opportunity and procedural due process to charter holders when the action under consideration is the closing of a campus or school due to its ratings or financial performance history. The requirements of procedural due process with respect to legislative enactments are quite different from those that apply to case-by-case application of the law to individual circumstances. A charter holder that did not agree to be bound by the change to its contract made by the 79th Texas Legislature was required to repudiate that contract by refusing to accept additional funding under the new law. See TEC, §12.1071(a). The agency must implement the statute enacted by the Texas Legislature.

Comment. Concerning proposed §97.1065(f), a representative of TCTA questioned statutory authority for this provision requiring the commissioner to order closure of a campus when alternative management of the campus was ordered, the district resumed operation of the campus, and the campus is rated Academically Unacceptable in the subsequent year. The commenter requested that the provision be deleted in subsection (f), or, if statutory authority exists, that the "shall" be changed to "may."

Agency Response. The agency disagrees. TEC, §39.1327(h), requires an alternative management service provider to demonstrate improvement in the performance of the campus it manages and directs the commissioner to evaluate the service provider's performance. This evaluation does not replace the commissioner's evaluation of the district and campus. It is in addition to that evaluation. If the commissioner's evaluation of the service provider's performance fails to show the improvement promised by the service provider contract, TEC, §39.1327(h), specifies consequences for the service provider. After the first year, the district has the option to terminate the contract with the commissioner's consent. After the second year, the district must terminate the contract. In that event, the district may resume operation of the campus with the approval of the commissioner.

Section 97.1065(f) relates to a campus that has already been subject to sanction under §97.1067. By definition, the performance of the campus required closure or alternative management and at least two additional years have passed without adequate improvement. By definition, the sanction initially chosen by the commissioner was alternative management, not campus closure. And by definition, the sanction chosen by the commissioner failed to achieve the purposes listed in §97.1053. At this juncture, the commissioner must close the campus. No other course is reasonable under the circumstances and §97.1065(f) so provides.

§97.1067, Alternative Management of Campuses

Comment. Concerning proposed §97.1067(e), a school administrator stated that, under the proposed rule, the educators and staff assigned to work at the campus under alternative management are district employees, questioned how the pay scale and benefits would be administered, and asked if the alternative management entity would be able to determine who to hire and fire. The administrator requested that the reporting structure, management, and human resources operations between the district and the alternative management entity be clarified in rule and recommended that the employees of a school under alternative management be employees of that organization rather than the district. A representative of ATPE raised questions concerning the provision of employment grievances under proposed §97.1067 and TEC, §39.1324. The ATPE representative stated an educator must exhaust the grievance process in order to retain the right to seek redress, so the procedures need to be clear and consistent. The ATPE representative asked how the district will consider grievances relating to the service provider when it does not have authority over that service provider other than what may be provided in the contract and asked for clarification of the responsibilities and liabilities of the service provider so that appropriate procedures for filing grievances remain available. The ATPE representative noted that a service provider is a governmental body only for purposes of Government Code, Chapters 551 and 552. The ATPE representative asked if the service provider must make available a separate grievance policy in its position as a separate, quasi-governmental body. The ATPE representative noted that proposed §97.1067(b)(4) requires the service provider contract to address certain liabilities but does not address the responsibility to provide a grievance procedure. The ATPE representative asked whether the contract could relieve the district board of its responsibility to consider employment grievances. The ATPE representative asked whether, if the service provider is required to hear grievances, it will enjoy the immunities of the school district. The ATPE representative requested further guidance in the rule by providing appropriate procedures for employment grievances. If the service provider contract is to provide for grievance procedures, the ATPE representative requested that model contract language be provided in the rules.

Agency Response. The agency disagrees. Section 97.1067(e) clearly provides that the educators and staff assigned to work at a campus operated by a service provider are "district employees for all purposes." Any other interpretation would render the educators assigned to work at the campus ineligible for participation in the Teacher Retirement System of Texas. There is no evidence the legislature intended this result. Because the ed-

ucators and staff assigned to work at a campus operated by a service provider are district employees for all purposes, all the rights conferred by Government Code, §617.005; Texas Constitution, Article I, Section 27; and other law apply with equal force before and after the service provider begins operating the campus. By contrast, a contract for educational services under TEC, §11.157, permits the district's contractor to employ its own educators and campus staff. Under §97.1067, the campus educators and staff retain their rights and obligations as employees of the district. The district has rights respecting the service provider as specified by TEC, §39.1327, §97.1067, and the service provider contract.

Section 97.1067(c) is clear that the service provider has the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions. These duties include not only those assigned by statute, such as TEC, §11.163(a)(2) and §11.202, but also those that are assigned by the board of trustees in its general policies and procedures. For example, under TEC, §26.011, the board must adopt a grievance procedure for hearing complaints under TEC, Chapter 26. Similarly, the board must hear grievances under Government Code, §617.005. If the policies and procedures of the district assign a duty to the principal of a campus, then a service provider under §97.1069 would have that duty under §97.1067(c).

The role of the service provider in the district's grievance procedures is determined by application of §97.1067(c) to the particular facts of each campus and district. While the service provider contract may not alter the requirements of the rule, it will be a crucial instrument for the parties to work out the details of their cooperation in this area, as in many others. It would be inappropriate for the agency to impose a single solution or to deprive the parties of solutions they find most useful.

A district employee assigned to work at a campus operated by a service provider clearly meets the definition of "professional employees of a school district" within the meaning of TEC, §22.051. A service provider should determine for itself whether this or other immunities may be applicable to its own employees.

Comment. Concerning proposed §97.1067, a representative of TSA stated the language in proposed §97.1067 regarding expenditures on campuses under alternative management may be difficult to implement. The commenter stated in proposed subsection (d) the language requires that the funding for the campus must not be less than the funding of other campuses operated in the district on a per-student basis so the service provider receives at least as much funding as the campus would otherwise have received. It stated student need varies from campus to campus and requiring an absolute equity standard may be unworkable. It requested striking the language requiring that funding for a campus under alternative management not be less than funding for other campuses on a per student basis while maintaining language requiring that the campus receive at least as much funding as it would otherwise have received.

Agency Response. The agency disagrees. Section 97.1067(d) is based on the language of HB 1 that provides: "Notwithstanding any other provision of this code, the funding for a campus operated by a managing entity must be not less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received." See TEC, §39.1327(i). This requirement has been implemented by the agency in §97.1067(d).

Regarding §97.1067(d), the legislature imposed a two-part standard. The funding of the campus must not be less than funding for other campuses on a per-student basis, and it must be at least as much as the campus would otherwise have received. The commenter proposed the agency adopt a rule that includes one but not the other of these statutory requirements. The agency lacks authority to adopt such a change.

Comment. Concerning proposed §97.1067, a representative of a school district stated the proposed rule states that funding for the campus cannot be less than the funding per pupil other campuses receive and the district must continue to support food services, transportation, extracurricular activities, and similar operational expenses of the campus. The commenter stated the proposed language does not take into consideration that some school districts have a decentralized finance system and a weighted per-pupil formula.

Agency Response. The agency disagrees. Section 97.1067(d) is based on the language of HB 1 that provides: "Notwithstanding any other provision of this code, the funding for a campus operated by a managing entity must be not less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received." See TEC, §39.1327(i). This requirement has been implemented by the agency in §97.1067(d).

Regarding §97.1067(d), the legislature imposed a two-part standard. The funding of the campus must not be less than funding for other campuses on a per-student basis, and it must be at least as much as the campus would otherwise have received. The commenter proposed the agency adopt a rule that includes one but not the other of these statutory requirements. The agency lacks authority to adopt such a change.

Comment. Concerning proposed §97.1067(d), a representative of TSTA stated this requires a district to provide at least the same funding to the campus as the previous year when it is assigned a service provider to provide alternative management. The commenter stated the funding will be lessened by the amount taken by the alternative management entity and this drops the per-student expenditure thus requiring more funds to be funneled to that campus from the district. The commenter recommended guidelines be developed to ensure that districts finance alternative management contracts with separate funds, leaving the per-student expenditures the same from year to year.

Agency Response. The agency disagrees. Section 97.1067(d) is based on the language of HB 1 that provides: "Notwithstanding any other provision of this code, the funding for a campus operated by a managing entity must be not less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received." See TEC, §39.1327(i). This requirement has been implemented by the agency in §97.1067(d).

Regarding §97.1067(d), the legislature imposed a two-part standard. The funding of the campus must not be less than funding for other campuses on a per-student basis, and it must be at least as much as the campus would otherwise have received. The commenter proposed the agency adopt a rule that includes one but not the other of these statutory requirements. The agency lacks authority to adopt such a change.

Comment. Concerning proposed §97.1067(d), a representative of TASA stated that guidelines for student funding vary from campus to campus and such a prescriptive rule could prevent districts from allocating appropriate funds to a campus based on their unique student needs.

Agency Response. The agency disagrees. Section 97.1067(d) is based on the language of HB 1 that provides: "Notwithstanding any other provision of this code, the funding for a campus operated by a managing entity must be not less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received." See TEC, §39.1327(i). This requirement has been implemented by the agency in §97.1067(d).

Regarding §97.1067(d), the legislature imposed a two-part standard. The funding of the campus must not be less than funding for other campuses on a per-student basis, and it must be at least as much as the campus would otherwise have received. The commenter proposed the agency adopt a rule that includes one but not the other of these statutory requirements. The agency lacks authority to adopt such a change.

Comment. Concerning proposed §97.1067, a member of a board of trustees requested clarification of the proposed language in §97.1067(c)(2).

Agency Response. The agency agrees that clarification is needed. As proposed, §97.1067(c) provided that the commissioner may implement additional sanctions and consider reports in accordance with §97.1065 but this reference is incomplete. The commissioner may consider reports under §97.1067(c)(1) when evaluating the need for additional sanctions under §97.1065(b). In addition, the commissioner will consider these reports in the course of the annual performance review of the school district and campus under TEC, §39.133. Such reports will also be considered in the course of the annual review of an alternative management service provider under TEC, §39.1327(h). In response to public comment, §97.1067(c)(2) was modified to include these two statutory references.

§97.1069, Providers of Alternative Campus Management

Comment. Concerning proposed §97.1069, a representative of TSTA requested revisions to the rule stating that as written it is somewhat ambiguous as to the authority granted to the commissioner in appointing a school district to provide alternative management services and as to whether the district must also agree to the appointment. The commenter requested that the rule be revised to make it clear that a district must actually submit a request for qualifications (RFQ) in order to be appointed in this manner and districts should not be unilaterally required to provide alternative campus management.

Agency Response. The agency disagrees. The language of the rule tracks the language of TEC, §39.1327(b). Although the statute does not require the agreement of the district assigned to provide alternative management, the commissioner will, in practice, consult with a district prior to making such an appointment. Districts are not required to submit an RFQ because the statute only requires the solicitation of proposals from qualified non-profit entities.

§97.1071, Special Program Performance; Intervention Stages

Comment. Concerning proposed §97.1071(a)(4), a representative of ACE stated that the commissioner should take into consideration that the PBMAS was first implemented in the 2004-2005 school year and performance standards have gone through many changes. The commenter stated that the PBMAS is not yet a precise art or a settled product.

Agency Response. The agency disagrees. The PBM system was developed in response to HB 3459 of the 78th Legislature, Regular Session, 2003, and the guiding principles of the system as described by the agency include responsiveness to change, as reflected in system evolution, and the ability to address the maximum inclusion of local education agencies in the system. The PBM system was piloted in 2003-2004 and implemented in 2004-2005. While changes to the system have been implemented over time, these are to be expected in a performance-based system with a stated goal of producing continuous improvement in student performance and program effectiveness. Therefore, while the agency disagrees with the suggestion that the PBM system is not yet a fully established system, the commissioner does take into account specific circumstances and changes that impact identification and intervention determinations as the system evolves across years of implementation.

Comment. Concerning proposed §97.1071(a)(1), a representative of ACE expressed concern that, as written, proposed §97.1071 does not reflect that using a system based on statistical analysis may raise concerns that do not necessarily demonstrate that a school is ineffectively implementing a program covered by PBMAS, or that a school needs intervention. The commenter cited examples related to statistical analysis of small numbers and the identification of special education students. The commenter stated that such anomalies could possibly be explained, but there is no system for appeal of an intervention level. The commenter stated the rule should provide, at a minimum, that after any local analysis is completed, a school should have an opportunity to explain its findings and have the intervention level removed where appropriate. The commenter stated this could be done through an appeal or informal review process.

Agency Response. The agency disagrees. The interventions activities as implemented under the PBM system promote actions such as those referenced by the commenter in that a local education agency can review its data, determine causes for the data results, and provide findings and explanations to the agency for consideration. To the extent that this comment is about PBMAS identification procedures, those procedures are adopted in rule under 19 TAC Chapter 97, Subchapter AA, §97.1005, Performance-Based Monitoring Analysis System, and is not a part of this adoption.

Comment. Concerning proposed §97.1071(a)(2), a representative of ACE stated the rule states that an intervention level can be assigned based on a comparison of a district's performance to performance of other districts. The commenter requested that the rule require the comparison of similarly situated schools with regard to school size and populations served when assigning intervention stages.

Agency Response. The agency disagrees. The PBM interventions process as it currently is implemented is applied appropriately to all local education agencies and operates within the guiding principles of the system. Its application to all districts equally mirrors the interventions approach used in other state and federal monitoring and evaluation systems.

Comment. Concerning proposed §97.1071(a), a representative of ACE suggested the proposed rule should take into consideration that assignment to an intervention level, and escalation

from one interval to a higher interval in subsequent years, should allow schools ample time to implement any improvement plan submitted by the school and approved by the agency. The commenter stated that if PBMAS is designed to help a school improve its programs then a school operating in good faith under an approved improvement plan should be given the time necessary to implement that plan before assigning the school to a level that indicates less satisfactory performance.

Agency Response. While the agency agrees that the concept of continuous improvement is a critical aspect of the PBM system, it disagrees that the current system as it is implemented provides inadequate time for a local education agency (LEA) to respond. The agency is currently piloting a process which allows certain selected LEAs to continue to implement a previously-developed campus improvement plan while forgoing more formal intervention activity requirements. While the agency believes that the intervention system, as implemented, aligns intervention requirements to activities that naturally would be undertaken by LEAs striving to improve performance, the agency will continue to review whether other strategies may prove to be effective in addressing LEA performance concerns.

Comment. Concerning proposed §97.1071(e), a representative of TSTA expressed the belief that this rule provides districts with little or no notice and places responsibility on districts to monitor a website to determine whether they are about to be sanctioned. The commenter requested that notices under this section should also be served to both the superintendent and the school board president by registered mail, return receipt requested.

Agency Response. The agency disagrees. The agency provides multiple notifications to LEAs related to PBM intervention staging, including posting notification correspondence to the *To The Administrator Addressed* correspondence listserv for Texas school administrators and posting intervention information to the web-based Intervention Stage and Activity Manager application available through the Texas Education Agency Secure Environment (TEASE), as well as through notifications provided to education service centers. It would be an unnecessary and burdensome expense to the agency and taxpayers for registered mail to be used as the method for sharing routine intervention information with numerous local education agencies. The system referenced in the rule provides adequate notice to LEAs.

Comment. Concerning proposed §97.1071(f)(1) and (2), a representative of ACE stated agreement with the proposed rule and provided rationale for the support.

Agency Response. The agency agrees.

General Comment

Comment. Six administrators commented that some issues addressed in the rules were dealt with in previous legislative sessions. The commenters stated that the 80th Texas Legislature, 2007, did not pass proposed legislation as laid out in part as a component to Senate Bill 4 during that session, and questioned why the agency would create similar rules. One of the commenters also suggested that the proposed rules constitute an attempt to subvert the legislative process.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 is codified at TEC, §39.1321, which is the basis for adopting new §157.1173 and §97.1037(g). This statute clearly states that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. TEC, §39.1321(c) and (d), expressly direct the commissioner to adopt the rule text as provided in §157.1173.

Comment. A legislator stated that Senate Bill 4, 80th Texas Legislature, 2007, was met with opposition due to provisions that would have limited due process related to the revocation of charter school contracts and expressed concern that the proposed rules would limit due process for charter schools.

Agency Response. The agency disagrees. HB 1 provides that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. The requirements of procedural due process with respect to legislative enactments are quite different from those that apply to case-by-case application of the law to individual circumstances. A charter holder that did not agree to be bound by the change to its contract made by the 79th Texas Legislature was required to repudiate that contract by refusing to accept additional funding under the new law. See TEC, §12.1071(a). The agency must implement the statute enacted by the Texas Legislature. TEC, §39.1321, is clear.

Comment. Two attorneys requested that the comment period be expanded to allow for additional time and input.

Agency Response. The agency agrees. The public comment period was extended through August 20, 2007.

The new sections are adopted under the Texas Education Code, §39.071, which authorizes the commissioner to define accreditation statuses and to determine the accreditation status of each school district; TEC, §39.131, which authorizes the commissioner to determine sanctions for a district that does not satisfy accreditation criteria under TEC, §39.071, the academic performance standards under TEC, §39.072, or any financial accountability standard as determined by the commissioner; TEC, §§39.132, 39.1322 - 39.1324, 39.1326, and 39.1327, which authorizes the commissioner to determine sanctions for an under-performing campus; TEC, §39.1331, which authorizes the commissioner to order certain districts or campuses to acquire professional services; and TEC, §§39.134 - 39.136, which authorizes the commissioner to address provisions relating to powers, duties, and costs for the assignment of a monitor, conservator, management team, campus intervention team, technical assistance team, managing entity under TEC, §39.1327, or board of managers.

The new sections implement the Texas Education Code, §§39.071, 39.131, 39.132, 39.1322 - 39.1324, 39.1326, 39.1327, 39.133, 39.1331, and 39.134 - 39.136.

§97.1051. Definitions.

For purposes under Texas Education Code (TEC), Chapter 39; Subchapter DD of this chapter (relating to Investigative Reports, Sanctions, and Record Reviews); and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) Campus--An organizational unit operated by the school district that is eligible to receive a campus rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated--Other or Not Rated--Data Integrity Issues.

(2) Campus closure--Cessation of all instructional activity on the campus.

(A) A district ordered to close a campus may apply to the commissioner of education for approval to repurpose a building or facility formerly housing the closed campus.

(B) A building or facility that is approved for repurposing under subparagraph (A) of this paragraph must house a completely different instructional program, bear a new name, and be assigned a new campus identification number.

(C) The commissioner shall not approve the repurposing of a building or facility under subparagraph (A) of this paragraph unless:

(i) all instructional activity under the programs operated at the repurposed building or facility occurs at grade levels not previously served by the closed campus; or

(ii) at least 50% of the students previously served by the closed campus are reassigned to other campuses, the campus administrator is removed or reassigned to other campuses, and at least 75% of the instructional staff employed on the campus are removed or reassigned to other campuses.

(3) Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

(4) Reconstitution--

(A) The removal or reassignment of some or all campus administrative and/or instructional personnel in accordance with at least the minimum requirements of TEC, §39.1324(b), taking into consideration proactive measures the district or campus has taken regarding campus personnel; and

(B) the implementation of a campus redesign, approved by the commissioner of education, that:

(i) provides a rigorous and relevant academic program;

(ii) provides personal attention and guidance;

(iii) promotes high expectations for all students; and

(iv) addresses comprehensive school-wide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.

§97.1053. Purpose.

(a) The provisions of TEC, Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation statuses assigned under TEC, §39.071, and the purposes of accreditation sanctions, which are to:

(1) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers of the academic, fiscal, and compliance performance of each district or campus on the standards adopted by the commissioner of education under TEC, §39.071(b) and (c), and/or listed in §97.1059 of this title (relating to Standards for All Sanction Determinations);

(2) encourage the district or campus to improve its academic, fiscal, and/or compliance performance by addressing each area of deficiency identified by the commissioner of education;

(3) enable the parents of students enrolled in the district, property owners in the district, general public, and policymakers to assist the district or campus in improving the district or campus performance by addressing each area of deficiency identified by the commissioner;

(4) encourage other districts or campuses to improve their performance so as to avoid similar action and to retain their accreditation; and

(5) improve the Texas public school system by eliminating poor academic, fiscal, and compliance performance by districts and campuses on the standards listed in §97.1059 of this title.

(b) The accreditation status assigned a district under §97.1055 of this title (relating to Accreditation Status) generally reflects performance under the state academic accountability rating system and financial accountability rating system beginning with the district's 2006 ratings. However, performance under these systems for earlier years shall be considered for purposes of accreditation statuses and sanctions under this subchapter. Accordingly:

(1) consideration of or failure to consider any rating of the district under §97.1055 of this title does not preclude consideration of that rating when determining accreditation sanctions under this subchapter; and

(2) except as provided by TEC, §39.1326, when determining accreditation sanctions under this subchapter, the commissioner shall consider the entire ratings history of the district and its campuses to the extent it is material.

§97.1055. Accreditation Status.

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.071(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.071(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.071(b) and (c), and specified in subsection (d) of this section.

(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.071, which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.071, are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.071(b) and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule;

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(b) Determination of Accredited-Warned status.

(1) A district shall be assigned Accredited-Warned status if, beginning with its 2006 rating, the district is assigned:

(A) for two consecutive school years, an academic accountability rating of Academically Unacceptable under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (I); or

(B) after investigation under TEC, §39.074 or §39.075, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071.

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if, beginning with its 2006 rating, the district is assigned:

(A) for three consecutive school years, an academic accountability rating of Academically Unacceptable under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (I); or

(B) after investigation under TEC, §39.074 or §39.075, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071.

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if, beginning with its 2006 rating, the district is assigned:

(A) for four consecutive school years, an academic accountability rating of Academically Unacceptable under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (I); or

(B) after investigation under TEC, §39.074 or §39.075, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.071.

(4) The commissioner's decision to revoke a district's accreditation may be appealed under §97.1037 of this title (relating to Record Review of Certain Decisions). If the decision is sustained on appeal, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1002 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.071(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;

(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and

(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.071(b)(2).

(f) Required notification of Accredited-Warned or Accredited-Probation status.

(1) A district assigned an accreditation status of Accredited-Warned or Accredited-Probation shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in the newspaper with the greatest circulation in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts.

§97.1057. Accreditation Sanctions.

(a) The provisions of Texas Education Code (TEC), Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation sanctions, which are specified in §97.1053 of this title (relating to Purpose).

(b) If the commissioner of education finds that a district or campus does not satisfy the accreditation criteria under TEC, §39.071, the academic performance standards under TEC, §39.072 or §39.073, or any financial accountability standard as determined by the commissioner, the commissioner may lower the district's accreditation status, academic accountability rating, or financial accountability rating, as applicable, and take appropriate action under this subchapter.

(c) Regardless of whether the commissioner lowers a district's status or rating under subsection (b) of this section, the commissioner may take action under this section if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.

(d) Subject to §97.1035 of this title (relating to Procedures for Accreditation Sanctions), once the commissioner takes action under this subchapter, the commissioner may impose on the district or campus any other sanction under this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title.

(e) In determining whether to impose a particular sanction under this subchapter, the commissioner may consider the costs and logistical concerns of the district, but shall give primary consideration to the best interest of the district's students. The sanction selected shall be reasonably calculated to address the district's or campus' deficiencies immediately or within a reasonable time, in the best interest of its present and future students. The following shall be considered as being contrary to the best interests of the district's students:

(1) inefficient or ineffectual use of district funds or property;

(2) failure to adequately account for funds; and

(3) receipt of a substantial over-allocation of funds for which the district has failed to plan prudently in light of its obligation to repay the funds under TEC, §42.258.

§97.1061. Technical Assistance Team Campuses.

(a) The commissioner of education will annually assign a technical assistance team to a campus rated Academically Acceptable in the state academic accountability rating system if that campus would be rated Academically Unacceptable using the accountability standards for the subsequent year. The commissioner may waive this requirement to assign a technical assistance team under standards adopted in the applicable annual accountability manual in §97.1001 of this title (relating to Accountability Rating System).

(b) The technical assistance team assigned pursuant to subsection (a) of this section will assist the campus in executing a school improvement plan and any other school improvement strategies the commissioner determines appropriate.

(c) For those campuses subject to the requirements of Texas Education Code (TEC), §11.253, the technical assistance team shall be composed of the members of the campus-level planning and decision-making committee required under TEC, §11.251 and §11.253, and shall include an additional member with the knowledge and ability to provide technical assistance in the area(s) subject to improvement planning. The additional member may be a member of the district-level planning and decision-making committee required under TEC, §11.251 and §11.252, who is not assigned to the campus or may be another individual with the requisite knowledge necessary to promote campus improvement.

(d) For those campuses not subject to TEC, §11.253, a technical assistance team shall include representative professional staff from the campus, parents of students enrolled in the campus, a business representative, community members, and an additional member with the knowledge and ability to provide technical assistance in the area(s) subject to improvement planning.

(e) The commissioner may review and approve the final membership of a technical assistance team assigned under TEC, §39.1322, and this section.

(f) Notwithstanding the provisions of subsections (a) - (e) of this section, a technical assistance team will not be assigned under TEC, §39.1322(a), if a campus intervention team has been assigned to the campus under the provisions of TEC, §39.1322(b).

§97.1063. Campus Intervention Team; Reconstitution.

(a) If a campus is rated Academically Unacceptable in the state academic accountability rating system for the current school year, the commissioner of education shall assign a campus intervention team (CIT) under Texas Education Code (TEC), §39.1322 and §39.1323. The duties and responsibilities of the CIT will be based on the reasons for the campus' Academically Unacceptable rating.

(1) In assigning a CIT, the commissioner will offer the school district an opportunity to recommend CIT members under procedures established by the Texas Education Agency (TEA).

(A) If the district does not recommend CIT members under TEA procedures, the commissioner will assign a CIT without such input.

(B) If the commissioner does not approve the CIT membership recommendation by the district, the commissioner will assign the CIT members.

(2) If the campus does not implement the school improvement plan or the recommendations of the CIT, the commissioner shall order the reconstitution of the campus in accordance with TEC, §39.1324.

(b) The principal of a campus assigned a CIT under subsection (a) of this section, or any person employed to replace that principal, shall participate in and complete the program requirements of the school leadership pilot program (SLPP) implemented in accordance with TEC, §11.203. The district shall be responsible for any costs associated with participation in the SLPP, such as travel, lodging, or extra duty pay.

(1) Participation in the SLPP shall begin not later than October 1 of the current school year.

(2) All program requirements of the SLPP shall be completed within one year of enrolling in the program.

(c) If a campus is rated Academically Unacceptable under the state academic accountability rating system for two consecutive school years, including the current school year, the campus shall be reconsti-

tuted under procedures developed by the TEA, and the CIT will continue to be assigned under TEC, §39.1324.

(1) A campus ordered to reconstitute shall use the current school year to plan the reconstitution, with the assistance of the district and CIT, and shall open the subsequent school year as a reconstituted campus regardless of the academic accountability rating assigned to the campus in that school year.

(A) The CIT shall decide which educators may be retained at the campus when it opens for the subsequent school year.

(B) A principal who has been employed by the campus in that capacity during the full two-year period described by this subsection may not be retained at the campus when it opens for the subsequent school year unless, in accordance with TEC, §39.116, the school district decides to retain the principal based on a demonstrated pattern of significant academic improvement by students enrolled at the campus.

(C) A teacher of a subject assessed by an assessment instrument under TEC, §39.023, may be retained for the subsequent school year only if the CIT determines that a pattern exists of significant academic improvement by students taught by the teacher.

(D) If an educator is not retained, the educator may be assigned to another position in the district when the district opens for the subsequent school year.

(2) The TEA may assign a monitor, conservator, management team, or board of managers to the campus in order to ensure the implementation of its school improvement and reconstitution plan.

(3) The commissioner shall order alternative management or campus closure under §97.1065 of this title (relating to Campus Closure or Alternative Management) when the campus has failed to implement recommendations of the CIT or terms of the school improvement and reconstitution plan and such order is needed to achieve the purposes listed in §97.1053 of this title (relating to Purpose).

(d) If a campus is rated Academically Unacceptable under the state academic accountability rating system for the school year after reconstitution is required to be implemented under subsection (c) of this section, the commissioner:

(1) shall review the district's implementation of the school improvement and reconstitution plan in accordance with TEC, §39.1324; and

(2) may order alternative management or campus closure under §97.1065 of this title based on this review and on any other relevant information.

(e) The commissioner shall order alternative management or campus closure under §97.1065 of this title when the campus has failed to implement recommendations of the CIT or terms of the school improvement and reconstitution plan and such order is needed to achieve the purposes listed in §97.1053 of this title.

§97.1067. Alternative Management of Campuses.

(a) By January 1 of the school year in which alternative management of a campus is ordered under §97.1065 of this title (relating to Campus Closure or Alternative Management), the school district shall:

(1) execute a contract in compliance with this section; and

(2) relinquish control over the campus to a service provider approved under §97.1069 of this title (relating to Providers of Alternative Campus Management).

(b) A contract under this section must be executed by the district and the service provider and must:

(1) relinquish all authority to perform the duties and responsibilities of a principal under Texas Education Code (TEC), §11.202(b)(1) - (6), with respect to the campus;

(2) comply with TEC, §39.1327(g) - (i); this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) provide for the creation, maintenance, retention, and transfer of all public records concerning the campus;

(4) include provisions governing liability for damages, costs, and other penalties for acts or omissions by the service provider, including failure to comply with federal or state laws;

(5) provide for termination of the contract if:

(A) the campus is rated Academically Acceptable under the state academic accountability rating system for two consecutive school years; or

(B) the commissioner of education orders campus closure under §97.1065(f) of this title;

(6) specify additional roles or responsibilities assumed by the service provider, if any;

(7) be approved by written resolution of the district's board of trustees; and

(8) be approved in writing by the commissioner.

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) If a request is denied or a recommendation is not implemented by the district, the service provider shall report to the TEA both its request or recommendation and the district's action in response.

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39.133 and §39.1327(h), as well as §97.1065(b) of this title.

(d) The funding for the campus must be not less than the funding of the other campuses operated by the district on a per-student basis so that the service provider receives at least as much funding as the campus would otherwise have received. The district must continue to support:

(1) campus maintenance and operations;

(2) transportation;

(3) food services;

(4) extracurricular activities;

(5) central office support services;

(6) state assessment administration; and

(7) similar operational expenses of the campus.

(e) A campus operated by a service provider under this section remains a campus of the district. Educators and staff assigned to work at the campus are district employees for all purposes. The campus is not subject to TEC, §11.253.

(f) A district subject to this section shall comply fully with TEA requests for information for the purpose of evaluating implementation of the contract, student performance, and management of the campus.

(g) A district that violates the terms of its contract under this section is subject to further sanctions under this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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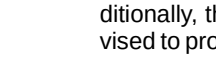

CHAPTER 157. HEARINGS AND APPEALS
SUBCHAPTER EE. REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS: CERTAIN ACCREDITATION SANCTIONS

19 TAC §§157.1151, 157.1153, 157.1155, 157.1157, 157.1159, 157.1161, 157.1163, 157.1165, 157.1167, 157.1169, 157.1171, 157.1173

The Texas Education Agency (TEA) adopts new §§157.1151, 157.1153, 157.1155, 157.1157, 157.1159, 157.1161, 157.1163, 157.1165, 157.1167, 157.1169, 157.1171, and 157.1173, concerning hearings and appeals. New §§157.1151, 157.1153, 157.1155, 157.1159, 157.1161, 157.1163, 157.1165, 157.1167, 157.1169, 157.1171, and 157.1173 are adopted without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3455) and will not be republished. New §157.1157 is adopted with changes to the proposed text as published in the June 15, 2007, issue.

The adopted new sections establish provisions relating to the review of certain accreditation sanctions by the State Office of Administrative Hearings (SOAH). The adoption reflects requirements mandated by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

HB 1, 79th Texas Legislature, Third Called Session, 2006, requires that an opportunity for challenging the record review of accreditation sanctions be available in specified circumstances and provided by the SOAH. The new 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, establishes new rules to ensure compliance with HB 1, as follows.

New 19 TAC §157.1151, Applicability, establishes that the subchapter is applicable to final orders issued for alternative management, closure of a school district or an open-enrollment charter school, or closure of a campus. The new rule also specifies final orders to which the subchapter does not apply. No changes were made to this section since published as proposed.

New 19 TAC §157.1153, Applicability of Other Law, provides guidance for the applicability of other laws in relation to the conduct of hearings. No changes were made to this section since published as proposed.

New 19 TAC §157.1155, Petition for Review, details the requirements for an entity to file a petition for review. The new rule describes the timelines and required content of the petition for review, including allegations and statement of requested relief. The new rule also addresses failure to comply with petition review requirements and addresses TEA responsibilities related to the petition. No changes were made to this section since published as proposed.

New 19 TAC §157.1157, Standard of Review, establishes procedures for standards for review by the SOAH in relation to decisions made by the commissioner. The new rule details the reasons that the SOAH could reverse the decision by the commissioner.

In response to public comment, 19 TAC §157.1157(b) was expanded to provide further description of the types of questions that are committed by law to the commissioner's discretion. Additionally, the language of subsection (e) of this section was revised to provide a procedural mechanism for accommodating the statutory authority of the commissioner in the event an error is found in an order under this section, and subsections (f) - (h) were added to supply a process and associated criteria governing remand for further proceedings on questions committed by law to commissioner discretion.

New 19 TAC §157.1159, Scope of Review; Additional Evidence, describes the type of additional evidence that can and cannot be submitted to the administrative law judge in addition to the agency record. No changes were made to this section since published as proposed.

New 19 TAC §157.1161, Components of Agency Record, details the components of what should be included in the agency record of proceedings. These components correspond to provisions specified in new 19 TAC §97.1037, Record Review of Certain Decisions. No changes were made to this section since published as proposed.

New 19 TAC §157.1163, Proceedings Regarding Agency Record, establishes agency procedures for filing the proceedings of the agency record, including timelines and cost. No changes were made to this section since published as proposed.

New 19 TAC §157.1165, Enforcement of Decision Pending Review, provides the procedures for the timely implementation of the commissioner's decision. No changes were made to this section since published as proposed.

New 19 TAC §157.1167, Expedited Review, provides the process for conducting the review in an expedited manner, including timelines for possible pre-hearings, continuances, and dispute resolution. The new rule also requires the administrative law judge to issue a final order no later than the 30th calendar day after the date on which the record is finally closed. No changes were made to this section since published as proposed.

New 19 TAC §157.1169, Conduct of Review During a Ratings Appeal, provides procedures for the commissioner and administrative law judge for the conduct of the review during a ratings appeal under TEC, §39.301, and for submission of documents related to the ratings appeal. No changes were made to this section since published as proposed.

New 19 TAC §157.1171, Final Decision, provides for final resolution of the appeal and states that the decision of the administrative law judge is final and may not be appealed. The rule specifies that an administrative law judge may not change an accreditation status or an academic or a financial accountability

rating. No changes were made to this section since published as proposed.

New 19 TAC §157.1173, Application to Charter Schools, provides for the application of new 19 TAC Chapter 157, Subchapter EE, to open-enrollment charter schools. No changes were made to this section since published as proposed.

The public comment period on the proposal began June 15, 2007, and ended July 15, 2007. The comment period was extended through August 20, 2007. Following is a summary of public comments received and corresponding agency responses regarding the proposed new sections.

§157.1155, Petition for Review

Comment. Concerning proposed §157.1155, four administrators, a charter school founder, and an individual suggested that subsection (b) be changed to permit amendments to the petition at any time.

Agency Response. The agency disagrees. Texas Education Code (TEC), §39.302(c)(1), mandates an expedited review of the commissioner's decision. The rule does not prohibit the SOAH administrative law judge from accepting amendments to the petition, but imposes a deadline for doing so. Any amendment must be filed within 30 days of the decision. TEC, §39.302(c)(2), requires the administrative law judge (ALJ) to issue a final decision within 30 days of closing the record. These deadlines are necessary in order to provide a final resolution of the districts' accreditation sanctions and statuses well in advance of the start of school the following year.

Comment. Concerning proposed §157.1155(b), a representative of Association of Charter Educators (ACE) stated the rule, as proposed, calls for dismissal of a petition for failing to meet technical pleading requirements and suggested that dismissing a petition for review for failing to meet technical pleading requirements could prevent a fair review of meritorious claims. The commenter questioned the sufficiency of the pleading rule and suggested this should be left to the purview of the ALJ.

Agency Response. The agency disagrees. TEC, §39.302(c)(1), mandates an expedited review of the commissioner's decision. The rule does not prohibit the SOAH ALJ from granting exceptions to the rule, but provides a standard of practice for the ordinary case. The ALJ has discretion to apply the rule as justice requires. The expedited process in the rule is needed in order to provide a final resolution of the district's accreditation sanction and status well in advance of the start of school the following year.

§157.1157, Standard of Review

Comment. Concerning proposed §157.1157(a), four administrators, an individual, two attorneys, a representative of Texas Association of School Boards (TASB), and a charter school founder advocated a "de novo" standard of review for the decisions required by proposed §97.1037.

Agency Response. The agency disagrees. TEC, §39.302, provides that a "challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code." Subchapter G of the Administrative Procedure Act governs a judicial appeal from a decision under that Act. Within that subchapter, §2001.173, Trial De Novo Review, governs those cases where the "manner of review authorized by law for the decision in a contested case that is the subject of complaint is by trial de novo." The manner of review authorized by TEC, §39.302, is not by trial de novo, but under "the substantial evidence rule." Accordingly, §2001.173 does not apply to this review.

The commissioner of education is a public office established to make decisions in the field of public education, and TEC, Chapter 39, requires the commissioner to make all accreditation decisions. The commissioner may not assign this function to SOAH. Yet under House Bill (HB) 1, the decision of SOAH on a number of the most significant accreditation matters "is final and may not be appealed." See TEC, §39.302(c)(3). This vests an exceptional amount of authority over accreditation matters in an agency without jurisdiction or expertise in public education. The agency must interpret the statute so as to preserve all discretion over accreditation policy in the commissioner, while vesting SOAH with the authority needed to accomplish the purpose of the statute. Because SOAH's review is final and not appealable, all components of a complete accreditation decision must be accomplished by the commissioner in order for it to receive proper review.

Comment. Concerning proposed §157.1157(b), a board of trustees member asked for clarification in the rule concerning the questions that are committed to the commissioner's discretion by TEC, §39.302.

Agency Response. The agency agrees that the questions committed by law to commissioner discretion require further description. As indicated in response to the previous comment, SOAH does not have authority to accredit school districts or impose accreditation sanctions. Section 157.1157(b) reflected this but lacked criteria for distinguishing questions committed to the commissioner's discretion. Because TEC, §39.302, makes the SOAH review final and because such review might otherwise exercise a function assigned to the commissioner, the questions committed to each agency must be clearly stated. In response to public comment, §157.1157(b) was modified to include, but not be limited to, a description of questions committed by law to commissioner discretion.

§157.1157, Standard of Review, and §157.1159, Scope of Review; Additional Evidence

Comment. Concerning proposed §157.1157 and §157.1159, five administrators and an individual asked why the commissioner is rejecting a contested case process for the Chapter 157, Subchapter EE, appeals that permits issues of fact to be tried and decided by the SOAH ALJ. The commenters suggested the contested case proceeding under proposed Chapter 157, Subchapter EE, should permit issues of fact to be tried.

Agency Response. The agency disagrees. TEC, §39.302, provides that a "challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code." The defining characteristic of this review is that the reviewing tribunal is prohibited from trying issues of fact. By permitting issues of fact to be tried by the SOAH ALJ, the rule would violate the plain meaning of TEC, §39.302.

The substantial evidence rule is defined by Government Code, Chapter 2001, Subchapter G, §2001.174, Review Under Substantial Evidence Rule or Undefined Scope of Review. This section provides the statutory requirement that if a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion.

Government Code, §2001.174, defines stipulations for this provision. This definition is the basis for new §157.1157.

Government Code, Chapter 2001, Subchapter G, §2001.175, Procedures for Review under Substantial Evidence Rule or Undefined Scope of Review, is the section that governs the process for conducting a substantial evidence review of agency decision-making. Government Code, §2001.174 and §2001.175, are primary sources for the language in the adopted rules governing SOAH's review of the commissioner's decision-making under TEC, §39.302. For example, §§157.1157, 157.1159, and 157.1163 are based on these provisions. Section 157.1165 is based on Government Code, §2001.176, Petition Initiating Judicial Review, which is also within Government Code, Chapter 2001, Subchapter G.

The agency finds that new §97.1037 is required by TEC, §39.302. A substantial evidence review of the commissioner's decision requires two steps: a decision by the commissioner under the relevant provision of TEC, Chapter 39, and a review of that decision by SOAH. Section 97.1037 is not the appeals process required by TEC, §39.302. It is the process by which the commissioner makes the decision that is subject to appeal. Because the manner of review is by substantial evidence on the record, the statute implies that the agency must make a record which may be reviewed under the substantial evidence rule. Section 97.1037 is simply the process by which the record of the commissioner's decision is created.

§157.1157, Standard of Review, and §157.1171, Final Decision

Comment. Concerning proposed §157.1157(b), a board of trustees member asked what procedure would apply, under the proposed §157.1157(b) and §157.1171(b), if the SOAH ALJ reverses the commissioner decision for one of the reasons listed in proposed §157.1157(e).

Agency Response. The agency agrees that clarification is needed. The SOAH ALJ does not have statutory authority to make discretionary decisions respecting the public school system. Contested case decisions are normally committed to an agency that has been created by the legislature to make decisions in a specialized, complex, or highly technical field of knowledge. Such decisions are ordinarily reviewed by a process calling, at most, for a proposed decision of the state agency to be recommended by SOAH. Under HB 1, however, the decision of SOAH on a number of highly significant accreditation matters "is final and may not be appealed." See TEC, §39.302(c)(3). But SOAH has no subject matter expertise in the field of knowledge that is the subject of these decisions and is not authorized to make substantive decisions respecting the accreditation of Texas public school districts. This is reflected in the legislative direction that the appeal to SOAH be by substantial evidence review.

The authority of the SOAH is limited to reviewing the facts and law on which the commissioner has based an accreditation decision subject to review. If those facts are in error, or the commissioner misapplied the law, the SOAH ALJ must remand the case back to the commissioner for entry of an appropriate accreditation status or sanction decision.

Section 157.1157(b), as proposed, reflected the fact that SOAH does not have authority to accredit school districts or impose accreditation sanctions. However, the proposed rule lacked a procedural mechanism for accommodating the statutory authority of the commissioner in the event that an error is found under proposed §157.1157(e). In the ordinary case, this interest is accommodated sufficiently by the procedures governing agency review of the proposal for decision, including Government Code, §2001.058. However, in view of the fact that §157.1171(b) makes the SOAH decision final, the agency agrees that a process is required for remanding questions committed by law to commissioner discretion. In response to public comment, §157.1157 was modified to supply a process and associated criteria governing remand for further proceedings on questions committed by law to commissioner discretion. Subsection (b) was modified to include, but not be limited to, a description of questions committed by law to commissioner's discretion. Additionally, the language of subsection (e) was revised to provide a procedural mechanism for accommodating the statutory authority of the commissioner in the event an error is found in an order under this section, and subsections (f) - (h) were added to supply a process and associated criteria governing remand for further proceedings on questions committed by law to commissioner discretion.

§157.1159, Scope of Review; Additional Evidence

Comment. Concerning proposed §157.1159(b), a representative of ACE suggested the ALJs are competent enough to decide the appropriateness of the record for review and this proposed rule unnecessarily invades the purview of the ALJ's authority.

Agency Response. The agency disagrees that the rule invades the ALJ's purview. Section 157.1159(b) and §157.1163 are based on Government Code, §2001.175. This is in obedience to TEC, §39.302, which specifically refers to Government Code, Chapter 2001, Subchapter G. Section 2001.175(e) provides that the reviewing tribunal is "confined to the agency record," and §2001.175(b) provides that the agency shall send to the reviewing tribunal "the entire record of the proceeding under review." Nothing in TEC, §39.302, or the Administrative Procedure Act makes it the prerogative of the reviewing tribunal to determine the makeup of the record it reviews. That is the responsibility of the agency from which a substantial evidence appeal is taken.

§157.1165, Enforcement of Decision Pending Review

Comment. Concerning proposed §157.1165, representatives of ACE, TASB, Texas Association of School Administrators (TASA), and Texas School Alliance; six administrators; and two charter school founders suggested that an appeal under proposed Chapter 157, Subchapter EE, should stay a decision by the commissioner regarding a district's accreditation status or sanction under proposed §97.1037. The commenters suggested that actions be postponed until a final appeals decision has been made.

Agency Response. The agency disagrees, for the following reasons.

Section 157.1165 is based on a provision within Government Code, Chapter 2001, Subchapter G, that governs review under the substantial evidence rule. Government Code, §2001.176(b)(3), provides that a petition seeking review under the substantial evidence standard "does not affect the enforcement of an agency decision." The same provision provides that "the filing of the petition vacates a state agency decision for which trial de novo is the manner of review authorized by law." Since TEC, §39.302(b), requires the substantial evidence standard of review, and precludes review by trial de novo, an appeal under that section does not stay or affect the enforcement of the decision under review.

Section 157.1165 is not only required by TEC, §39.302, it is required by the practical exigencies of the system established

by HB 1. For example, TEC, §39.1327(d), provides, "The district must execute a contract with an approved provider and relinquish control of the campus before January 1 of the school year." Ratings appeals mandated by TEC, §39.301, may not be completed until early November. It is simply not possible for the district to negotiate a contract with an alternative management provider and take all the other necessary steps to plan its relinquishment of control by January 1, unless it does so in parallel with the appeal afforded by TEC, §39.302.

The agency presumes the legislature was aware that a ratings appeal under TEC, §39.301, and a sanctions appeal under TEC, §39.302, must run concurrently with the steps required by TEC, §39.1327, and other sanctions. The legislature intended an appealing district to take active and effective steps to implement the decision of the commissioner even while it pursues a substantial evidence review of it. This principle is reflected in §157.1165.

§157.1169, Conduct of Review During a Ratings Appeal

Comment. Concerning proposed §157.1169, four administrators, two charter school founders, and a representative of ACE suggested that an appeal of a rating under TEC, §39.301, should stay proceedings by the SOAH under TEC, §39.302. The commenters suggested a commissioner's decision should not be deemed final until all underpinnings for the decision are valid and uncontested.

Agency Response. The agency disagrees. Section 157.1169 permits the commissioner to move forward with accreditation and sanction decisions that must be determined so that the district may begin planning and implementation for the coming school year. Conducting the SOAH appeal of a proposed sanction is readily accomplished via a presumption that the rating will stay in place. Where this presumption is not valid, the rule provides for supplementing the record with new ratings information. After weighing the costs and benefits to the school children of Texas, the commissioner has determined that a system that permits the appeal to go forward using this procedure provides the greatest economy and efficiency in most cases. Where the circumstances of a particular case indicate otherwise, the rule provides that the commissioner may withdraw the decision or request that the appeal be abated.

§157.1171, Final Decision

Comment. Concerning proposed §157.1171(a)(3), a board of trustees member suggested that, where the appeal in question is one from a decision to close the district under proposed §157.1151(a)(3), the SOAH ALJ may have the authority to assign a different accreditation status, and asked for clarification on how the status can be changed.

Agency Response. The agency disagrees. The authority of the SOAH ALJ is limited to reviewing the facts and law on which the commissioner has based an accreditation-related decision. If those facts are in error, or the commissioner misapplied the law, the SOAH ALJ must remand the case back to the commissioner for entry of an appropriate accreditation status or sanction. The SOAH does not have authority to accredit school districts.

Comment. Concerning proposed §157.1171(b), four administrators, a charter school founder, and an individual asked why the commissioner is not allowing the normal judicial appeal under Government Code, §2001.171, from decisions of the ALJ under proposed §157.1171.

Agency Response. The agency disagrees. The commissioner is not authorized by TEC, §39.302, to adopt such a rule. TEC, §39.302(c)(3), specifically provides that the decision of the ALJ is final and "may not be appealed." This provision is more recent and more specific to these proceedings than Government Code, §2001.171, and so supersedes it.

§157.1173, Application to Charter Schools

Comment. Concerning proposed §157.1173(b), a legislator, a charter school chief executive officer (CEO) and founder, five administrators, a charter school founder, a representative of ACE, a superintendent of a charter school, and an individual suggested that proposed §157.1173(b) exceeds the agency's authority.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 expressly provides that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. TEC, §39.1321(c), as added by HB 1, directs the commissioner to establish specific requirements for automatic revocation or modification of the charter of an open-enrollment charter school if closure of the charter school is ordered. The corresponding language in §157.1173(a) provides for automatic revocation or modification of the charter. TEC, §39.1321(d), as added by HB 1, further specifies that an open-enrollment charter school is not entitled to an additional hearing for sanctions imposed under procedures provided by TEC, Chapter 12, Subchapter D. The corresponding language in §157.1173(b) implements this statutory specification. Additionally, the response to comments on §97.1037(g)(2) also provides an analysis of statutory language and its alignment to the language included in commissioner's rules. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §157.1173(b), a legislator, charter CEO and founder, five administrators, a charter school founder, a representative of ACE, a superintendent of a school, and an individual suggested that proposed §157.1173(b) implements a bill that failed to pass the Texas Legislature.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 enacted new TEC, §39.1321, which is the basis for proposed §157.1173 and §97.1037(g). This statute clearly states that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. TEC, §39.1321(c) and (d), expressly direct the commissioner to adopt the rule text as provided in §157.1173. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Concerning proposed §157.1173(a)(1) and (2), a representative of ACE noted that the timing of an automatic revocation or modification under proposed §157.1173(a)(1) or (2) could be disruptive to students, parents, and teachers of the district and suggested that a uniform timeline be set to avoid this.

Agency Response. The agency disagrees. The factors identified by the commenter must be considered by the commissioner in issuing a final order under §97.1037(f). It is not possible to fix a general rule that will meet the exigencies of every imaginable set of circumstances that comes for decision, so the effective date

of the decision should be established through the record review process. The comment also suggests that §157.1173(a)(1) and (2) be amended to avoid possible misinterpretation. The agency finds the rule as proposed is clear. The effective date of a decision that is automatically effective is the date on which the decision of the commissioner is affirmed by SOAH. In the context of the subchapter as a whole, §157.1173(a) can be given no other reasonable construction.

Comment. Concerning proposed §157.1173(b), a legislator, a charter CEO and founder, five administrators, and a charter school founder suggested that proposed §157.1173(b) violates the procedural due process rights of charter holders.

Agency Response. The agency disagrees. The 79th Texas Legislature passed HB 1 in its Third Called Special Session, on May 15, 2006. HB 1 provides that once specific accreditation sanctions have been duly imposed under TEC, Chapter 39, specific adverse action under TEC, §12.115, is both mandatory and automatic. There is no further hearing provided or permitted. The requirements of procedural due process with respect to legislative enactments are quite different from those that apply to case-by-case application of the law to individual circumstances. A charter holder that did not agree to be bound by the change to its contract made by the 79th Texas Legislature was required to repudiate that contract by refusing to accept additional funding under the new law. See TEC, §12.1071(a). The agency must implement the statute enacted by the Texas Legislature. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

General Comments

Comment. A CEO and founder of a charter school asked that the agency carefully consider the negative impact that the proposed rules under TEC, Chapter 39, will have on drop-out recovery charter schools. The commenter stated the best and most experienced minds remind us of the need to overhaul the state accountability system to recognize and reward these special schools, and the proposed rules as a group ignore the promise that adverse action against the charter contract will consider the "best interest of the students" under TEC, §12.115(b). None of the proposed rules for adoption under Title 19, Texas Administrative Code Chapter 97, Subchapter DD, or Chapter 157, Subchapter EE, give any weight to this interest; it is not even mentioned. TEC, Chapter 12, specifically mandates consideration of this factor when applying accountability sanctions to charters under TEC, Chapter 12. The commenter strongly urged that these errors and oversights be corrected, and that the adoption of the rules be delayed until the next legislative session to permit the legislature the opportunity to correct accountability to reflect learning growth.

Agency Response. TEC, §39.1321, provides that TEC, §12.115(b), has no applicability to an accountability sanction under Chapter 39. However, the accountability standards established by the commissioner under TEC, Chapter 39, do take into consideration the best interests of the students. It is in the best interests of its students that each public school meets the minimum state standards. These substantive standards are not found in either Chapter 97, Subchapter DD, or Chapter 157, Subchapter EE, because those provisions deal exclusively with the process. The substantive standards are adopted at Chapter 97, Subchapter EE, which comprises the commissioner's determination on the best interest of the state's students with respect to each of the criteria set or authorized to be set by statute. However, in response to this and other comments, references to charter schools in 19 TAC §97.1051, Definitions, and §97.1053, Purpose, have been removed, leaving those matters to be determined by statute.

Comment. Two attorneys asked about the process regarding formal appeals as described in the *Accountability Manual*, and stated that the proposed rules do not appear to take into account the requirements described under TEC, §39.301, to develop rules pertaining to a review committee. The attorneys further stated that this review is in lieu of the formal appeals process via SOAH or the record review and would ideally be met through the development of rules at the same time as those described under TEC, §39.302. Additionally, the attorneys stated the rules called for by other provisions of TEC, Chapter 39, do not appear to have been developed. The attorneys suggested it would be helpful if all rules were developed at the same time in order for a comprehensive review to take place.

Agency Response. The agency disagrees. The rule applicable to an appeal under TEC, §39.301, has previously been adopted under 19 TAC Chapter 97, Subchapter AA, §97.1001, and is not a part of this adoption. Section 97.1037 is designed to meet the requirements of TEC, §39.302, which applies to different decisions under TEC, Chapter 39, and imposes different requirements.

Comment. Two attorneys stated that the distinctions between the review process for individuals accused of violating the rules or laws and the process for districts is confusing and appears to be duplicative.

Agency Response. The agency disagrees. In all instances, the current and proposed rules use the term "person" to include a district, and the term "district" to include a charter holder. The interpretation of the word "person," as found in TEC, §39.076, is governed by the Code Construction Act at Government Code, §311.005(2). That Act defines the term "person" as follows: "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. When the Legislature used the term "person" in TEC, Chapter 39, without assigning it a different meaning, it assigned the term the meaning found in the Code Construction Act.

No further definitional rule is required for the term "person" to acquire the meaning assigned by law. Nevertheless, since readability and ease of use is an important goal in the agency's rulemaking, 19 TAC Chapter 97, Subchapter EE, §97.1051, was modified to include a definition for "person." Clarification was also added to §97.1051 that the definitions found in that subchapter also apply to 19 TAC Chapter 97, Subchapter DD.

Comment. Two attorneys requested that the comment period be expanded to allow for additional time and input.

Agency Response. The agency agrees. The public comment period was extended through August 20, 2007.

The new sections are adopted under the Texas Education Code, §39.302, which authorizes the agency to establish procedures for creating an administrative record for review by the State Office of Administrative Hearings for certain decisions.

The new sections implement the Texas Education Code, §39.302.

§157.1157. Standard of Review.

(a) A challenge under this subchapter shall be governed by the substantial evidence rule as provided by Government Code, §2001.174 and §2001.175, and judicial case precedents construing those provisions.

(b) The State Office of Administrative Hearings (SOAH) may not substitute its judgment for the judgment of the commissioner of education on questions committed to the commissioner's discretion. Questions committed to the commissioner's discretion include but are not limited to the following:

(1) any questions arising under a statute, rule, or other legal standard that requires or permits the commissioner to make a decision within general legal guidelines that do not mandate a specific result under the circumstances; and

(2) the execution of any act authorized or required to be taken by the commissioner of education.

(c) The SOAH may not substitute its judgment for the judgment of the commissioner on the weight to be assigned the evidence before the commissioner.

(d) The SOAH may affirm the commissioner decision in whole or in part.

(e) The SOAH shall reverse and remand the decision for further proceedings if substantial rights of the school district or open-enrollment charter school have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the commissioner are:

(1) in violation of a statutory provision;

(2) in excess of the commissioner's authority;

(3) made through unlawful procedure;

(4) affected by other error of law;

(5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(f) An order of remand may not direct or control the commissioner's exercise of discretion on a matter committed to the commissioner's discretion by §157.1171(b) of this title (relating to Final Decision) and TEC, Chapter 39.

(g) On remand, the commissioner shall apply the facts and law as determined by the SOAH to reach a new decision in light of all the circumstances of the case.

(h) The commissioner shall continue on remand to exercise discretion over the accreditation decision as required by §157.1171(b) of this title and TEC, Chapter 39.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2007.

TRD-200706405

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: January 6, 2008
Proposal publication date: June 15, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board adopts amendments to §157.7, concerning Denial of a License, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5627) and it will not be republished.

The amendments to §157.7 are adopted to add language so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under Senate Bill 914 which amended Texas Occupations Code, Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the amendments incorporate the legislatively mandated changes.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses, §1103.154, Rules Relating to Professional Conduct and Subchapter K, §1103.508, Contested Hearings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706481
Troy Beaulieu
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Texas Appraiser Licensing and Certification Board
Effective date: January 8, 2008
Proposal publication date: August 31, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.11

The Texas Appraiser Licensing and Certification Board adopts amendments to §157.11, concerning Contested Cases; Entry of Appearance; Continuance, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5627) and it will not be republished.

The amendments to §157.11 are adopted to add language so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under Senate Bill 914 which amended Texas Occupations Code, Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the amendments incorporate the legislatively mandated changes. An additional amendment to §157.11 replaces an outdated statutory reference with the correct statutory reference.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses , §1103.154, Rules Relating to Professional Conduct and Subchapter K, §1103.508, Contested Hearings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706484
Troy Beaulieu
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Effective date: January 8, 2008
Proposal publication date: August 31, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER C. POST HEARING

22 TAC §§157.15 - 157.18

The Texas Appraiser Licensing and Certification Board adopts amendments to §157.15, Decision, and §157.18, Motions for Rehearing; Finality of Decisions and new rules §157.16, Exceptions and Replies, and §157.17, Final Decisions and Orders, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5628) and they will not be republished.

No written comments were received regarding adoption of the amendments.

The adopted amendments to §157.15, Decision, add language so that the board's rules relating to the contested case hearing process will conform to legislative changes made in contested case hearings procedure and process under SB 914, 80th Legislature Regular Session, which amended Texas Occupations Code, Chapter 1103. Those legislative amendments require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. The amendments implement the legislatively mandated changes.

New §157.16, Exceptions and Replies, adds language so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearings procedure and process under SB 914, 80th Legislature Regular Session, which amended Texas Occupations Code, Chapter 1103. Those legislative amendments require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. The new rule implements the legislatively mandated changes.

New §157.17, Final Decisions and Orders, adds language so that the board's rules relating to the contested case hearing process will conform to legislative changes made in contested case hearings procedure and process under SB 914, 80th Legislature Regular Session, which amended Texas Occupations Code, Chapter 1103. Those legislative amendments require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. The new rule implements the legislatively mandated changes.

The adopted amendments to §157.18, Motions for Rehearing; Finality of Decisions, add language so that the board's rules relating to the contested case hearings process will conform to legislative changes made in contested case hearing procedure and process under SB 914, 80th Legislature Regular Session, which amended Texas Occupations Code, Chapter 1103. Those legislative amendments require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. The amendments implement the legislatively mandated changes.

The new rules and amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which grants the board authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses , §1103.154, Rules Relating to Professional Conduct and §1103.508, Subchapter K. Contested Hearings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706534

Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Effective date: January 9, 2008
Proposal publication date: August 31, 2007
For further information, please call: (512) 465-3900

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.16

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, Texas Administrative Code, §201.16, concerning Memorandum of Understanding with the Texas Department of State Health Services.

The amendment is adopted without change to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7201) and will not be republished.

The adopted amendment updates the language of the rule to coincide with the current statutes in effect.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706565
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 10, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 936-2466

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.12

The Texas Board of Nursing (BON or Board) adopts without changes an amendment to Title 22, Texas Administrative Code, §213.12 (Witness Fees and Expenses), relating to Practice and Procedure. The proposed amendment was initially published in the November 9, 2007, edition of the *Texas Register* (32 TexReg 8082). The adopted amendment to §213.12 is to allow a witness who has been subpoenaed by the Board or a party to a proceeding of the Board's to receive adequate reimbursement for their expenses and efforts. Unless the Board designates otherwise, under the Government Code (§2001.103), a witness is allowed only $10 dollars a day compensation and $.10 per mile reimbursement.

No comments were received in response to the proposal.

The adoption is pursuant to the authority of Texas Occupations Code, §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706447
Katherine Thomas
Executive Director
Texas Board of Nursing
Effective date: January 8, 2008
Proposal publication date: November 9, 2007
For further information, please call: (512) 305-6823

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.3, 214.4, 214.6, 214.12

The Texas Board of Nursing (BON) adopts amendments to 22 TAC §§214.3 (Program Development, Expansion and Closure), 214.4 (Approval), 214.6 (Administration and Organization), and 214.12 (Records and Reports) relating to Vocational Nursing Education, with changes to the proposed text published in the November 9, 2007, publication of the *Texas Register* (32 TexReg 8083).

The Sunset Advisory Commission Report to the 80th Legislature, May 2007, Recommendations, Change in Statute and Management Action, made recommendations, and House Bill (HB) 2426 (Board's Sunset Bill), implemented those recommendations, resulting in changes to Chapter 301 of the Texas Occupations Code (Nursing Practice Act). The proposed amendments implement new §301.157(a) - (d) of the Nursing Practice Act. For clarification, a change was made to the proposed amendments of §214.3(a)(1)(B) because clauses (i) and (ii) were conflicting and could cause confusion, so clause (i) will be deleted as it is not completely accurate, and clause (ii) language will become part of the main body of §214.3(a)(1)(B).

No comments were received in response to the proposed amendments of these sections.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§214.3. Program Development, Expansion and Closure.

(a) New programs.

(1) Proposal to establish a new vocational nursing educational program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital is eligible to submit a proposal to establish a vocational nursing educational program. Specialized institutions such as nursing homes, tuberculosis hospitals, and others do not qualify as controlling agencies, but may participate with a program as an affiliating health care facility.

(B) The new vocational nursing educational program must be approved/licensed by the appropriate Texas agency, i.e. THECB, TWC, before approval can be granted by the Texas Board of Nursing for the program to be implemented. The proposal to establish a new vocational nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new vocational nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) The proposal shall be completed under the direction/consultation of a registered nurse who meets the Board-approved qualifications for a program director according to §214.6 of this chapter .

(E) Sufficient nursing faculty, with appropriate expertise, shall be in place for development of the curriculum component of the program.

(F) The proposal shall include information outlined in Board guidelines.

(G) After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(I) The program shall not admit students until the Board approves the proposal and grants initial approval.

(J) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(K) After the proposal is approved, an initial approval fee shall be assessed per §223.1 (related to Fees).

(L) A proposal without action for one calendar year shall be inactivated.

(M) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months from the date of the denial before submitting a new proposal to establish a vocational nursing educational program.

(2) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Program.

(1) Only vocational nursing educational programs which have full approval status are eligible to initiate an extension program.

(2) An approved vocational nursing educational program desiring to begin an extension program which duplicates current curriculum and teaching resources shall:

(A) Notify the Board office at least four (4) months prior to implementation of the extension program;

(B) Submit required information according to Board guidelines; and

(C) Provide documentation of notification or approval from the controlling agency, THECB, TWC and /or other regulatory/funding agencies, as applicable, at least four (4) months prior to implementation, as appropriate .

(3) When the extension program's curriculum deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply.

(4) Extension programs of vocational nursing educational programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(5) A program intending to close an extension program shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension program.

(B) Submit required information according to Board-approved guidelines including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(c) Transfer of Controlling Agency. The authorities of the controlling agency shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board guidelines.

(d) Closure of a Program. A program shall notify the Board office in writing of their intent to close the program.

(1) The controlling agency shall be responsible for graduating enrolled students or ensuring the satisfactory transfer of those students into another program.

(2) The controlling agency shall provide for permanent storage of student records.

(3) A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed by the appropriate Texas agency, i.e., THECB, TWC, to conduct business in the State of Texas must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and response to the Board's recommendations. Change from one status to another is based on NCLEX-PN ™ examination pass rates, compliance audits, survey visits, and other factors listed under §214.4(b) of this chapter. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to admit students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) The program shall not enroll more than one class per year while on initial approval.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.

(2) Full Approval.

(A) Full Approval is granted by the Board to a vocational nursing educational program that is in compliance with all requirements and has responded to all recommendations.

(B) Only programs with Full approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers.

(3) Full Approval with Warning is issued by the Board to a vocational nursing educational program that is not meeting legal and educational requirements.

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status to full approval or full approval with warning, or may withdraw approval.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board approved vocational nursing educational programs.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

(1) deficiencies in compliance with the rule;

(2) utilization of students to meet staffing needs in health care facilities;

(3) noncompliance with school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(4) continual failure to submit records and reports to the Board office within designated time frames;

(5) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(6) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(7) student enrollments without sufficient faculty, facilities and/or patient census;

(8) failure to maintain a 80% passing rate on the licensing examination by first-time candidates;

(9) failure of program director to document annually the currency of faculty licenses; or

(10) other activities or situations that demonstrate to the Board that a program is not meeting legal requirements and standards.

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-PN ™ examination pass rate, and other pertinent data.

(1) Compliance Audit. Each approved vocational nursing educational program shall submit a biennial audit regarding its compliance with the Board's legal and educational requirements.

(2) NCLEX-PN ™ Pass Rates.

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-PN ™ examination.

(B) When the passing score of first-time candidates who complete the vocational nursing educational program is less than 80% on the NCLEX-PN ™ examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-PN ™ examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subsection (c)(2)(A) of this section, is less than 80% for two consecutive examination years.

(D) A program shall be placed on conditional approval status if, within one examination year from the date the warning is issued, the performance of first-time candidates fails to be at least 80% on the NCLEX-PN ™ examination, or the faculty fail to implement appropriate corrective measures.

(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program was placed on conditional approval.

(F) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.

(3) Survey Visit. Each vocational nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-PN ™ examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards *equivalent to the Board's ongoing approval standards*.

(A) The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(B) The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(i) meet the prescribed course of study or other standard under which it sought approval by the Board.

(ii) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in §214.4(c)(4)(C) of this chapter, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board.

(iii) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(C) A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(i) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(ii) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(D) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(E) A school of nursing or educational program, approved by the Board as stated in §214.4(c)(4)(C) of this chapter, that does not maintain voluntary accreditation is subject to review by the Board.

(F) The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(G) A school or program from which approval has been withdrawn may reapply for approval.

(H) A school of nursing or educational program accredited by an agency recognized by the Board shall:

(i) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(ii) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the director, chief administrative officer of the controlling agency, and others as determined by the Board.

§214.6. Administration and Organization.

(a) The controlling agency shall be licensed or accredited by a Board-recognized agency.

(b) There shall be an organizational chart indicating lines of authority between the vocational nursing educational program and the controlling agency.

(c) The program shall have comparable status with other educational units within the institution (controlling agency).

(d) The controlling agency shall:

(1) be responsible for satisfactory operation of the vocational nursing educational program;

(2) meet rules and regulations as stated in this chapter;

(3) provide the number of faculty necessary to meet minimum standards set by the Board and to insure a sound educational program;

(4) provide for suitable classroom and clinical facilities;

(5) provide secretarial assistance;

(6) provide sufficient funds for operation and maintenance of the program to meet requirements set by the Board; and

(7) select and appoint a qualified registered nurse director or coordinator for the program who meets the requirements of the Board. The director shall:

(A) hold a current license or privilege to practice as a registered nurse in the state of Texas;

(B) have been actively employed in nursing for the past five years, preferably in supervision or teaching. If the director has not been actively employed in nursing for the past five years, the director's advanced preparation in nursing, nursing education, and nursing administration and prior relevant nursing employment may be taken into consideration by the Board staff in evaluating qualifications for the position;

(C) have a degree or equivalent experience that will demonstrate competency and advanced preparation in nursing, education, and administration; and

(D) have had five years of varied nursing experience since graduation from a professional nursing educational program.

(e) When the director or coordinator of the program changes, the director or coordinator shall submit to the Board office written notification of the change indicating the final date of employment. The controlling agency shall ensure that:

(1) a new director or coordinator qualification form is submitted to the Board office for approval prior to being hired at an existing program or a new program;

(2) the director may have responsibilities other than the program provided that an assistant program coordinator/lead instructor is designated to assist with the program management;

(3) a director with responsibilities other than the program shall not have major teaching responsibilities; and

(4) written job descriptions exist which clearly delineate responsibilities of the director, coordinator and lead instructor, as appropriate.

(f) In a fully approved vocational nursing educational program, if the individual to be appointed as director or coordinator does not meet the requirements for director or coordinator as specified in subsection (d)(7) of this section, the administration is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(g) A newly appointed director or coordinator of a vocational nursing educational program shall attend the next scheduled orientation provided by the Board staff.

(h) The director or coordinator shall have the authority to direct the program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, and dismissal of students. Additional responsibilities include but are not limited to:

(1) providing evidence of faculty expertise and knowledge to teach curriculum content;

(2) acting as agent of the Board and issuing temporary permits to eligible graduates, upon completion of the program;

(3) verifying student's completion of program requirements on the Affidavit of Graduation; and

(4) completing and submitting the Texas Board of Nursing Compliance Audit and Nursing Educational Program Information Survey by the required dates.

§214.12. Records and Reports.

(a) Student Forms--Student records shall be maintained on all students and shall be accessible to all faculty members and to Board representatives. Record forms may be developed by an individual school. Hospital employment forms are not to be used for student records.

(b) Required Student Forms--The required student forms are the student application, evidence of student's ability to meet objectives/outcomes of the program, clinical practice evaluation, transcript, signed receipt of written student policies, evidence of student receipt of eligibility information, and statement of withdrawal.

(c) Record Storage--Records shall be safely stored to prevent loss, destruction, or unauthorized use. Records of all graduates must be completed prior to permanent storage. Records on students who withdraw from the program shall be completed up to the date of withdrawal.

(d) Retention of Student Records--All records shall be maintained for two years. At minimum, a transcript shall be retained as a permanent record on all students.

(e) Copies of the program's Texas Board of Nursing Compliance Audit of the Nursing Educational Program (CANEP), Nursing Educational Program Information Survey (NEPIS), and important Board communication shall be maintained as appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706610
Katherine Thomas
Executive Director
Texas Board of Nursing
Effective date: January 10, 2008
Proposal publication date: November 9, 2007
For further information, please call: (512) 305-6823

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.6, §215.12

The Texas Board of Nursing (BON) adopts amendments to 22 TAC §215.6 (Administration and Organization) and §215.12 (Records and Reports Relating to Professional Nursing Education) relating to Professional Nursing Education without changes to the proposed text published in the November 9, 2007, publication of the *Texas Register* (32 TexReg 8088).

The Sunset Advisory Commission Report to the 80th Legislature, May 2007, Recommendations, Change in Statute and Management Action, made recommendations, and House Bill 2426 (Board's Sunset Bill), implemented those recommendations, resulting in changes to Chapter 301 of the Texas Occupations Code (Nursing Practice Act). The adopted amendments implement new §301.157(a) - (d) of the Nursing Practice Act.

No comments were received in response to the proposed amendments of these sections.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine Thomas
Executive Director
Texas Board of Nursing
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For further information, please call: (512) 305-6823

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CHAPTER 216. CONTINUING EDUCATION

22 TAC §§216.1 - 216.7

The Texas Board of Nursing (BON or Board) adopts amendments without changes to Title 22, Texas Administrative Code, §§216.1 - 216.7, relating to Continuing Education. The proposed amendments were initially published in the November 16, 2007, edition of the *Texas Register* (32 TexReg 8248). Senate Bill 993 (SB 993) was passed in the 80th Legislative Session and addressed Nursing Peer Review. It also specifically addressed continuing education (CE) for nurses in that, effective September 1, 2007, the Board has the discretion to accept only Type I CE courses for license renewal. Senate Bill 993 amended the Nursing Practice Act (Tex. Occ. Code, §301.303) by deleting the portion of the section that required the Board to allow Type II CE. The adopted amendments require all CE courses taken by nurses for the purpose of renewal be Type I.

No comments were received in response to the proposal.

The adoption is pursuant to the authority of Texas Occupations Code, §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706452
Katherine Thomas
Executive Director
Texas Board of Nursing
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Proposal publication date: November 16, 2007
For further information, please call: (512) 305-6823

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CHAPTER 219. ADVANCED PRACTICE NURSE EDUCATION

22 TAC §§219.1 - 219.13

The Texas Board of Nursing (BON or Board) adopts amendments to Title 22, Texas Administrative Code, §§219.1 - 219.13, relating to Advanced Practice Nurse Education without changes to the proposed amendments published in the November 16, 2007, edition of the *Texas Register* (32 TexReg 8253). The Texas Government Code requires the Board to review all rules every four years for the purpose of determining whether the rule should continue to exist. Chapter 219 has been under its required review. Additionally, as a result of recommendations made by the Sunset Advisory Commission and subsequent changes to the Nursing Practice Act during the 2007 legislative session, the Board's role has changed with regard to approval of nursing education programs. Although the Board will continue to play a role in approval of pre-licensure programs, it will not approve post-licensure programs that are nationally accredited by a nursing education accrediting body approved by the U.S. Department of Education.

No comments were received in response to the proposal.

The adoption is pursuant to the authority of Texas Occupations Code, §301.151 and §301.152, which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706478
Katherine Thomas
Executive Director
Texas Board of Nursing
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For further information, please call: (512) 305-6823

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

22 TAC §850.1

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §850.1 regarding the Board's authority. It is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4873).

The adopted amendment revises language to 22 TAC §850.1 to provide a clear citation to the relevant statutory authority.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706485
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Effective date: January 8, 2008
Proposal publication date: August 10, 2007
For further information, please call: (512) 936-4405

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22 TAC §850.10

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §850.10 regarding definitions. It is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4874).

The adopted amendment revises language to 22 TAC §850.10 to provide a clear citation to the relevant statutory authority.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706486
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Effective date: January 8, 2008
Proposal publication date: August 10, 2007
For further information, please call: (512) 936-4405

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SUBCHAPTER C. FEES

22 TAC §850.82

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §850.82 regarding the insufficient funds fee. It is adopted without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4728).

The adopted amendment to 22 TAC §850.82 clarifies that a fee will be charged for insufficient funds and not just for dishonored checks.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. This amendment also corresponds to §1002.152, which authorizes the Board to set reasonable and necessary fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706440
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Effective date: January 7, 2008
Proposal publication date: August 3, 2007
For further information, please call: (512) 936-4405

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CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.10

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.10 regarding definitions. It is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4874).

The adopted amendment revises language to 22 TAC §851.10 to provide a clear citation to the relevant statutory authority.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706487
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
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Proposal publication date: August 10, 2007
For further information, please call: (512) 936-4405

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22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.80 regarding fees. It is adopted without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4729).

The adopted amendment adds language to 22 TAC §851.80 which makes changes to the fee charged for the geophysics exam and adds a fee for insufficient funds.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. This amendment

also corresponds to §1002.152, which authorizes the Board to set reasonable and necessary fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706439
Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
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Proposal publication date: August 3, 2007
For further information, please call: (512) 936-4405

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SUBCHAPTER B. CODE OF PROFESSIONAL CONDUCT

22 TAC §851.101

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.101 regarding the code of professional conduct. It is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4875).

The adopted amendment revises language to 22 TAC §851.101 to provide a clear citation to the relevant statutory authority.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
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Proposal publication date: August 10, 2007
For further information, please call: (512) 936-4405

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22 TAC §851.107

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.107 regarding the prevention of unauthorized practice. It is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4875).

The adopted amendment revises language to 22 TAC §851.107 to provide a clear citation to the relevant statutory authority.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

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Vincent Houston
Acting Executive Director
Texas Board of Professional Geoscientists
Effective date: January 8, 2008
Proposal publication date: August 10, 2007
For further information, please call: (512) 936-4405

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.602

The Commissioner of Insurance adopts new §1.602, concerning a notice to be given by insurers to policyholders regarding an Internet website providing information to consumers relating to the purchase of residential property insurance and personal automobile insurance. The new section is adopted without changes to the proposed text published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8093).

REASONED JUSTIFICATION. This new section is necessary to implement the provisions of SB 611, 80th Legislature, Regular Session, effective May 21, 2007, which adds Subchapter D to Chapter 32 of the Insurance Code. Subchapter D requires the Department and the Office of Public Insurance Counsel to establish and maintain a single website that provides information to enable consumers to make informed decisions relating to the purchase of residential property insurance and personal automobile insurance.

Section 32.104(b) of the Insurance Code requires specified insurers to provide notice of the Internet website required by Subchapter D in a conspicuous manner with each residential property insurance or personal automobile insurance policy issued or renewed in this state. Section 32.104(b) also requires the Commissioner of Insurance to determine the form and content of the

notice. The adopted new section establishes the form and content of this notice.

The new section provides the text of the notice in English and Spanish for consistency with the notice currently required under §1.601 (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures). To allow for flexibility and cost containment, especially during the implementation process, the new section allows insurers to provide the required notice in one of two specified ways and also allows insurers to opt to provide the notice both ways. Insurers may provide the notice as part of the Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures required under §1.601 or otherwise in a conspicuous manner with each policy.

As provided by §32.104(b) of the Insurance Code, the new section applies only to insurers that comprise the top 25 insurance groups in the national market and that issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

As required by SB 611, the notice requirement mandated by the new section applies to all policies that are delivered, issued for delivery, or renewed on or after January 1, 2008.

HOW THE SECTION WILL FUNCTION. Adopted §1.602(a) states the purpose and applicability of the new §1.602. It specifies which insurers are subject to the section and provides the effective date for the notice requirements mandated by the section.

Adopted §1.602(b) requires insurers to provide the required notice in one of two specified ways and also allows insurers to opt to provide the required notice both ways. Notwithstanding the requirements in §1.601(a)(3) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) to the contrary, an insurer shall include the notice required in §1.602(b)(1) in English and Spanish. The text must be in at least 10-point type. If an insurer elects to comply with the new section by amending the notice required under §1.601 to include the requirements of this new section, the insurer need provide only the one notice to comply with both §1.601 and §1.602.

Alternatively, the insurer may provide the notice specified in adopted §1.602(b)(2) in English and Spanish to comply with the notice requirements. This notice is required to be provided in a conspicuous manner with each policy and to be printed in at least 10-point type.

As authorized by the Uniform Electronic Transactions Act (Business and Commerce Code, Chapter 43), which is addressed in Commissioner's Bulletin No. B-0002-02, dated January 16, 2002, insurers may provide the notice required by the new §1.602 in the form that their policyholders have opted to receive policies, including via e-mail.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: Several commenters raised concern that the January 1, 2008 effective date does not allow sufficient lead time for programming and implementation.

Agency Response: The effective date is statutorily mandated by SB 611. The Department recognizes the difficulties presented by the commenters but the law does not provide the Department waiver authority or the opportunity to excuse the application of the statute. The Department sees the language in SB 611 as unambiguous and the adopted section requirements are consistent with the legislation. Further, insurers can meet the notice requirement deadline by using an insert.

Comment: Several commenters asserted that the notice is premature. The new section mandates that insurers begin providing the notice on January 1, 2008, for a website that will not be available until September 1, 2008.

Agency Response: The Department recognizes the situation but the law does not provide the Department waiver authority or the opportunity to excuse the application of the statute. The Department sees the language in SB 611 as unambiguous and the adopted section requirements are consistent with the legislation. Further, the existing www.helpinsure.com website will be used. The website has been updated with links to the Office of Public Insurance Counsel's policy comparisons and the Department's current price comparisons for personal automobile and homeowners insurance.

Comment: Several commenters expressed concerns about providing the required notice with policies effective on or after January 1, 2008, which are sent out for renewal prior to January 1, 2008.

Agency Response: The Department recognizes that many insurers send out renewals up to 60 days prior to their effective dates. If an insurer sends out renewal notices prior to January 1, 2008, for policies effective on or after January 1, 2008, the insurer may provide the notice in a subsequent mailing to comply with §1.602. As authorized by the Uniform Electronic Transactions Act, the insurer may provide the notice to these policyholders in the form that the policyholders have opted to receive policies and other information from the insurer, including via e-mail.

Comment: One commenter opined that the required notice is attempting to go beyond the scope of the legislation and should apply only to new policies and not renewals due to the use of the term issued in Insurance Code §32.104(b). The commenter also suggested that the notice should be provided only with the first renewal.

Agency Response: SB 611 in section 3(b) clearly states that the §32.104(b) notice requirements apply to insurance policies that are "delivered, issued for delivery, or renewed" on or after January 1, 2008. The new requirements are consistent with SB 611.

Comment: One commenter questioned the applicability of the proposed section to the Texas Automobile Insurance Plan Association (TAIPA) because TAIPA does not issue insurance policies.

Agency Response: The Department recognizes that TAIPA assigns policyholders to authorized insurers that write automobile liability insurance in Texas and does not issue policies itself. However, under §1.602(a)(2), the top 25 insurance groups in the national market and who issue residential property insurance or personal automobile insurance policies in Texas are required to provide the notice to TAIPA risks that have been assigned to them.

Comment: One commenter requested clarification on how the new §1.602 would apply to Lloyd's plans, reciprocals, county mutuals, or other insurers.

Agency Response: In accordance with §32.101 of the Insurance Code, the new §1.602 applies to insurers that comprise the top 25 insurance groups in the national market and that issue residential property insurance or personal automobile insurance policies in Texas. Lloyd's plans, reciprocals or interinsurance exchanges, county mutual insurance companies, farm mutual insurance companies, and other insurers that are part of the top 25 insurance groups in the national market and issue residential property insurance or personal automobile insurance policies in Texas are required to comply with the new §1.602.

Comment: One commenter stated that the notice requirement in the proposed §1.602(b)(1) should be amended because it is confusing as to whether insurers are required to send either or both forms of the notice and whether they are required to send separate notices to comply with §1.601 and §1.602.

Agency Response: The Department disagrees that §1.602(b)(1) is confusing. Section 1.602(b) provides that each insurer specified in subsection (a)(2) must comply with either subsection (b)(1) or (b)(2), or may opt to comply with both. Further, §1.602(b)(1) states that an insurer may include the specified text in the notice required under §1.601(a)(3). Thus, if an insurer elects to comply with the new §1.602 by amending the notice required under §1.601, the insurer need provide only the one notice to comply with both §1.601 and §1.602.

Comment: One commenter requested that either the proposed §1.602 be amended or a new rule be published concerning data reporting under Insurance Code, Chapter 32, Subchapter D.

Agency Response: The Department disagrees with the comment. As provided in the new §1.602(a)(1), the purpose of the new §1.602 is to establish the form and content of the notice required under Insurance Code §32.104(b). Hence, the new §1.602 is limited in scope to the notice of the Internet website.

Comment: One commenter recommended that the term boldface in §1.602(b)(1) be replaced with bold face.

Agency Response: The Department has consulted the American Heritage Dictionary of the English Language, Fourth Edition (Houghton Mifflin Company, 2004) and determined that the term boldface is acceptable.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL. Neither for nor against, with recommended changes: Association of Fire and Casualty Companies of Texas, Allstate, Farmers Insurance Group, Insurance Council of Texas, Texas Automobile Insurance Plan Association.

STATUTORY AUTHORITY. The section is adopted pursuant to Insurance Code §32.104(b) and §36.001. Section 32.104(b) requires the Commissioner of Insurance to determine the form and content of the notice of the Internet website, which insurers are required to provide pursuant to §32.104(b) of the Insurance Code. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2007.

TRD-200706490

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: November 9, 2007
For further information, please call: (512) 463-6327

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

28 TAC §131.1

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of §131.1, concerning initiation of lifetime income benefits (LIBs). The repeal of this section is adopted without changes to the proposal published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7856), and as corrected in the proposal published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8358).

The repeal of this section is necessary for the Division to conform the provisions related to the initiation of lifetime income benefits to the Texas Court of Appeals' ruling in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 183 S.W.3d 754 (Tex.App - Austin 2006 no writ). The *Mid-Century* case held that lifetime income benefits are to be paid from the date an injured employee is determined to be entitled to lifetime income benefits but not prior to that date.

The adoption of the repeal will allow the Division to conform the provisions related to the initiation of lifetime income benefits to the *Mid-Century* ruling. The repeal will also clarify for stakeholders precisely when lifetime income benefits begin to accrue and are payable. This repealed rule will not be replaced with another rule. Labor Code §408.161 already provides that lifetime income benefits are paid until the death of an employee as a result of one of seven specified injuries. The remaining provisions of the rule are merely duplicative of the Texas Labor Code or other Division rules.

Comment: Commenters supported the repeal of §131.1.

Agency Response: The Division agrees the repeal of §131.1 is necessary. The repeal will assist in conforming provisions related to the initiation of lifetime income benefits to the court's ruling in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 183 S.W.3d 754 (Tex.App - Austin 2006 no writ).

Comment: A commenter recommends the Division clarify that the repeal is not retroactive and that a carrier may not seek dispute resolution in cases where lifetime income benefits are being paid and then seek reimbursement from the subsequent injury fund. The commenter further recommends that, if the proposed repeal is effective retroactively, the Division should state the specific date it becomes effective.

Agency Response: The Division agrees that the repeal of the rule is not retroactive and will become effective 20 days after

the date on which the Commissioner's adoption is filed with the Secretary of State. Although adoption of the repeal will not be effective retroactively, the adopted repeal is intended to conform the rule to the current state of the law as determined by the *Mid-Century* ruling filed February 24, 2006. The other repealed provisions of §131.1 included unnecessary language that is reiterated or referenced in the Labor Code or addressed in other Division rules but has no new effect on the law.

For: Insurance Council of Texas and Boeing.

For with changes: One individual.

Against: None.

The repeal is adopted under Labor Code, §§408.161, 402.00111, and 402.061. Section 408.161 provides that lifetime income benefits are paid until the death of an employee for: (1) total and permanent loss of sight in both eyes; (2) loss of both feet at or above the ankle; (3) loss of both hands at or above the wrist; (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist; (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency' legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706514
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 9, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 804-4288

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.650

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of §134.650 concerning Prospective Review of Medical Care Not Requiring Preauthorization. This repeal is adopted without changes to the proposal as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7857).

Rule 134.650 provided a process to resolve disputes of medical necessity in which the insurance carrier had prospectively denied future medical care that did not require preauthorization under §134.600, concerning Preauthorization, Concurrent Review, and Voluntary Certification of Health Care. The repeal of this section is a result of the Division's adoption of §137.100, concerning Treatment Guidelines, which applies to health care provided on or after May 1, 2007.

The purpose of §134.650 was to address the pretreatment impasse between insurance carriers and health care providers regarding health care that did not require preauthorization, but was informally being denied in advance by insurance carriers on the basis of medical necessity and, in some instances, relatedness to the compensable injury. Section 134.650 provided a process to resolve that impasse.

Texas Labor Code §413.011(e) required the Division to adopt treatment guidelines. Subsequently, §137.100 adopted the *Official Disability Guidelines- Treatment in Workers' Compensation* (ODG) as the treatment guideline for providing non-network health care to injured employees. Treatments and services provided within the ODG are presumed to be reasonable and reasonably required; therefore, preauthorization is not required for treatments provided within the ODG, except in certain circumstances.

Since adoption of the ODG, preauthorization is required when 1) the treatment or service is on the Division's preauthorization list, 2) the diagnosis is not included in the treatment guidelines, 3) the treatment or service is under study or not recommended in the ODG, or 4) the care exceeds the Division's treatment guidelines in frequency or duration. Treatment not addressed by, or that exceeds, the Division's treatment guidelines requires preauthorization, therefore, insurance carriers may not informally deny proposed health care in advance. If preauthorization is required and denied by the insurance carrier, the Division provides dispute resolution through the Independent Review Organization (IRO) process. Treatment that is preauthorized raises a health care provider's assurance of payment and denial of preauthorization can be appealed through the IRO process. The preauthorization and IRO processes provide remedies that were not previously available in situations where the §134.650 process was commonly used. With the ODG, preauthorization, and IRO processes in place, there is no longer a need for the process that was provided by §134.650.

The repeal of §134.650 removes the former process to resolve disputes of medical necessity in which the insurance carrier had prospectively denied future medical care that did not require preauthorization under §134.600. Rule 137.100, concerning Treatment Guidelines will continue in effect and the IRO process will serve to resolve medical necessity disputes.

COMMENT: Commenters support the repeal of §134.650.

AGENCY RESPONSE: The Division agrees. With the ODG, preauthorization, and IRO processes in place, there is no longer a need for the dispute process that was provided by §134.650 for prospective denials of medical care.

COMMENT: Commenter requests that preauthorization be eliminated for physical and occupational therapy requests for treatment for diagnosis and number of visits that are in the ODG guidelines since the diagnosis and number of recommended visits are already a part of the guideline and it seems a waste of treatment time to go through this unnecessary bureaucracy.

AGENCY RESPONSE: The Division disagrees. This comment is outside the scope of this repeal. However, the Division clarifies that the Labor Code at §413.014 requires preauthorization of physical and occupational therapy services.

For: Insurance Council of Texas and Zenith Insurance Company.

Neither For or Against: One individual.

The repeal is adopted pursuant to Labor Code §§406.010, 406.031, 408.004, 408.021, 408.025, 413.013, 413.018, and 413.055, 402.0111, and 402.061. Section 406.010 authorizes the Commissioner to adopt rules regarding claims service. Section 406.031 holds an insurance carrier liable for compensation for an eligible employee's injury arising out of and in the course and scope of employment. Section 408.004 allows the Commissioner to require injured employees to submit to medical examinations to resolve questions regarding appropriate medical care and similar issues. Section 408.021 provides that the injured employee is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 authorizes the Commissioner to adopt requirements for reports and records that are required to be filed with the Division by health care providers. Section 413.013 allows the Commissioner to establish programs for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services. Section 413.018 provides that the Division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. Furthermore, the Commissioner may adopt rules and forms as necessary to implement §413.018. Section 413.055 allows the Commissioner to issue medical interlocutory orders requiring carriers to be liable for specific future medical care. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Norma Garcia
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Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4288

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.114

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §116.114. Section 116.114 is adopted *without changes* to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6053) and will not be republished.

The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 3732, passed by the 80th Legislature (2007), requires that the commission adopt rules relating to permitting of Advanced Clean Energy Projects (ACEP). House Bill 3732 and the associated rule changes are intended to provide an incentive for the development of advanced, clean power projects in Texas. The legislation established new Texas Health and Safety Code (THSC), §382.0566, Advanced Clean Energy Project Permitting Procedure, which specifies certain deadlines for TCEQ's air permit review for qualifying projects and directs TCEQ to incorporate those deadlines into commission rules. The deadlines are intended to ensure that permit applications for ACEP are processed in an expedited manner.

House Bill 3732 established a definition of ACEP under THSC, §382.003, Definitions. Under this definition, an ACEP must meet the following criteria: 1) an application for a permit is filed on or after January 1, 2008, and before January 1, 2020; 2) the project involves the use of coal, biomass, petroleum coke, solid waste, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity; 3) the project is capable of achieving on an annual basis a 99 percent or greater reduction of sulfur dioxide emissions, a 95 percent or greater reduction in mercury emissions, and a nitrogen oxides emission rate of 0.05 pounds or less per million British thermal units; and 4) the project renders carbon dioxide capable of capture, sequestration, or abatement if any carbon dioxide is produced.

As required by THSC, §382.0566, the adopted rule specifies that the executive director shall complete the technical review of an ACEP permit application no later than nine months after the application is declared to be administratively complete, and shall issue a final order issuing or denying the permit no later than nine months after the application is declared to be technically complete. The rule allows an extension of up to three months if the number of pending applications will prevent the commission from meeting the specified deadlines without creating an extraordinary burden on the resources of the commission. The rule does not exempt ACEP permit applications from applicable requirements relating to contested case hearings.

SECTION DISCUSSION

§116.114. Application Review Schedule.

The commission is amending §116.114 to implement provisions of HB 3732 and THSC, §382.0566. The amendment revises §116.114(a) to add deadlines associated with the review of ACEP permit applications. These new deadlines only apply to the processing of permit applications for ACEP as defined in THSC, §382.003(1-a). However, the processing of ACEP permit applications remains subject to existing applicable requirements and deadlines specified elsewhere in §116.114, in cases where those requirements or deadlines are more stringent. ACEP permit applications remain subject to applicable requirements relating to contested case hearings.

Section 116.114(a)(3)(A) states that the executive director shall complete the technical review of an ACEP permit application no later than nine months after the application is declared to be administratively complete. Section 116.114(a)(3)(B) states that the commission shall issue a final order issuing or denying the permit no later than nine months after the application is declared to be technically complete. The rule allows an extension of up to three months if the number of pending applications will prevent the commission from meeting the specified deadlines without creating an extraordinary burden on the resources of the commission.

Existing §116.114(a)(3), relating to refunds of permit fees, is renumbered as §116.114(a)(4).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state. The rulemaking is not a major environmental rule because it is procedural in nature. The rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking. House Bill 3732 and THSC, §382.0566, address processing ACEP applications in an expedited manner. The amendment to §116.114 merely implements the deadlines for TCEQ's review of ACEP applications. Further, the rule does not add any requirements that would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state.

In addition, a regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted requirements are consistent with applicable federal standards. In addition, the adopted rule does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rule is subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to implement deadlines created by HB 3732 and THSC, §382.0566, relating to TCEQ's air permit review for ACEP applications so that the applications are processed in an expedited manner. This amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of this rule is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendment is consistent with CMP goals and policies because the rulemaking is a procedural rule that will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate or exceed any standards identified in the applicable CMP goals and policies. The adopted rule ensures that air permit applications for ACEP are reviewed by the TCEQ in an expedited manner. The adopted rule does not affect the technical criteria that are used to evaluate such permit applications and does not change applicable public participation requirements for the permit application. The adopted rule does not affect the type of emission control technology required by the permit and does not affect the authorized emission rates from permitted facilities. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amendment relates to time frames and deadlines associated with the review of new source review permit applications. The

adopted rule affects all sites equally and has no specific effect on sites subject to the Federal Operating Permits Program.

PUBLIC COMMENT

The proposed revisions were published in the September 7, 2007, issue of the *Texas Register.* A public hearing for this rulemaking was held on September 24, 2007, and the comment period closed on September 26, 2007. The commission received comments on the proposed rule from the City of Dallas, the City of Houston, the Clean Coal Technology Foundation of Texas (CCTFT), Jackson Walker L.L.P. on behalf of the Gulf Coast Lignite Coalition, the TCEQ Office of Public Interest Counsel (OPIC), the Texas Mining and Reclamation Association (TMRA), and the EPA Region 6.

RESPONSE TO COMMENTS

The Cities of Dallas and Houston indicated general support for HB 3732, but expressed concern that the emission specifications in the definition of ACEP, particularly the NO_x emission rate of 0.05 lb/MM BTU, may not be representative of the cleanest energy production possible. The City of Dallas and the City of Houston commented that several existing power plants meet or exceed the NO_x criteria, and recommended that any project certified under this program result in NO_x emissions below 0.05 lb/MM BTU.

The emission specifications in the definition of ACEP were established by HB 3732 and incorporated into THSC, §382.003, Definitions. Commission rules implementing HB 3732 must be consistent with the statutory definition of ACEP and the associated emission specifications. The commission is not changing the rule in response to this comment.

The Cities of Dallas and Houston expressed general concern about the air quality impacts associated with coal power plants.

The commission is required to adopt rules to implement HB 3732 and THSC, §382.0566. The commission does not have the authority to reject projects that meet the eligibility requirements of the legislation and associated statutes, regardless of the type of fuel used. The commission is not changing the rule in response to this comment.

CCTFT, TMRA, and Jackson Walker, L.L.P. expressed support for the rules as proposed.

The commission appreciates the support.

OPIC recommended requiring that the executive director directly refer all ACEP permit applications to the State Office of Administrative Hearings (SOAH). OPIC commented that this direct referral of all ACEP permit applications would be the most efficient method of ensuring that the public has the greatest amount of time to participate in the hearing process. CCTFT, TMRA, and Jackson Walker L.L.P. commented that the rule should not provide for the mandatory direct referral of ACEP permit applications to SOAH. Jackson Walker L.L.P. incorporated the comments submitted by CCTFT into its comments, and TMRA supported the comments submitted by CCTFT. CCTFT commented that neither the language nor the intent of HB 3732 provide a basis for such a direct referral to SOAH. CCTFT commented that such a direct referral would not be fully consistent with the public notice and participation process established by HB 801. CCTFT also commented that the authors of HB 3732 gave ample consideration to the timelines contained in the legislation. CCTFT stated that the introduced version of the bill required that the permit be issued or denied within 12 months of the date the executive director determined the application was administratively complete, and did not provide for any extension. CCTFT stated that the bill was later modified to extend the overall permitting timeline by six months, and include a provision for an additional three-month extension, which is in the adopted version. CCTFT commented that these changes to the bill were made after consultation with TCEQ staff and stakeholders from environmental groups to address their concerns that the initial timeline was too short. CCTFT expressed confidence that the commission would be capable of processing ACEP permit applications within the 18-month timeline.

Existing rules at 30 TAC §55.210, Direct Referrals, already allow the executive director (or the permit applicant) to directly refer a permit application to SOAH where appropriate. House Bill 3732 did not specify any changes to existing rules or practices concerning direct referrals. Therefore, it does not appear necessary to address direct referrals in this rulemaking. The commission is not changing the rule in response to these comments.

OPIC recommended that the executive director require publication of a dual Notice of Application and Preliminary Decision (NAPD) and Notice of Contested Case Hearing within one week of determining that the application is technically complete. OPIC commented that the hearing should take place no later than 30 days from the date of publication of the NAPD.

The recommended change is not necessary, as the rule will not include the mandatory direct referral of ACEP permit applications to SOAH. In cases where a hearing request is received, the NAPD and Notice of Contested Case Hearing will be published according to the processes and deadlines specified in existing rules. The date of any hearing must be at least 30 days after publication of the newspaper hearing notice in order to comply with the provisions of 30 TAC §39.603(e).

OPIC recommended that the rule require the Administrative Law Judge(s) to issue a proposal for decision (PFD) on HB 3732 applications within one month, rather than the customary two months, from the close of the record. OPIC stated that this would allow all parties more time to fully develop the record through discovery, the hearing on the merits, and closing briefing. OPIC also recommended that the rules require that SOAH issue the PFD no later than six weeks before the date when a final order from the commission is due.

Although the commission acknowledges that it would generally be desirable for the PFD to be issued more quickly for HB 3732 applications, the commission does not consider it appropriate to set formal deadlines for SOAH's process within Chapter 116. No changes were made in response to this comment.

The EPA indicated general support for the proposed amendment concerning the deadlines for ACEP permit applications.

The commission appreciates the support.

The EPA commented that, although the term ACEP is defined in the Texas Health and Safety Code, it would be helpful to include a definition of ACEP in the proposed rules.

The commission agrees that it would generally be preferable to include relevant definitions in commission rules. However, the commission did not propose to open the applicable definitions section of Chapter 116. The general practice is to include definitions applicable to Chapter 116 in Subchapter A. Therefore, the commission is not changing the rule in response to this comment.

The EPA commented that the current Texas SIP includes §116.114 as adopted by TCEQ on June 17, 1998, which was approved by the EPA on September 18, 2002. The EPA stated that subsequent revisions to §116.114 were submitted to the EPA as part of the October 25, 1999, and September 25, 2003, SIP submittals. The EPA commented that the proposed revision to §116.114 cannot be processed until the TCEQ has addressed the EPA's concerns with the October 25, 1999, SIP revision.

Commission staff is reviewing the EPA's concerns with the October 25, 1999, SIP revision as expressed in the EPA's August 14, 2006, letter. While this amendment adds language to §116.114 concerning the review of ACEP permit applications, this amendment does not change the existing rule language that was submitted to the EPA in previous SIP revisions. The commission is not changing the rule in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission. The amended section is also adopted under House Bill 3732, passed by the 80th Legislature (2007) and THSC, §382.0566, Advanced Clean Energy Project Permitting Procedure, which specify certain deadlines for TCEQ's air permit review for ACEP applications.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, 382.0566, and House Bill 3732, passed by the 80th Legislature (2007).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 288. WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §288.1 and §288.30. Section 288.30 is adopted *with changes* to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6060). Section 288.1 is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 2007, the 80th Legislature passed Senate Bill (SB) 3 and House Bill (HB) 4. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new Texas Water Code (TWC) provisions related to water conservation plans. Currently, the requirements relating to water conservation plans and the commission are in TWC, §11.1271. The commission's rules related to water conservation plans are in Chapter 288.

Applicants for a new or amended water right and the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses must submit a water conservation plan to the commission. These plans must include 5-year and 10-year targets established by the entity that submits the plan.

The new provisions passed by the legislature in 2007 include new submittal requirements for water conservation plans and that the commission provide for the enforcement of these requirements.

Section 2.04 of SB3 and Section 4 of HB 4 amend TWC, §11.002, by adding a definition for "Best management practices."

Section 2.06 of SB 3 and Section 6 of HB 4 amend TWC, Subchapter E, Chapter 13, by adding §13.146 that requires the commission to require retail public utilities that provide potable water service to 3,300 or more connections to submit a water conservation plan to the executive administrator of the Texas Water Development Board (Board). The plan must be based on specific targets and goals developed by the retail public utility and use appropriate best management practices.

Section 2.18 of SB 3 and Section 8 of HB 4 amend TWC, Chapter 16, by adding Subchapter K, §16.401 and §16.402, Water Con-

servation. This new subchapter requires the Board to implement a statewide public education awareness program; mandates that entities that are required to submit a copy of a water conservation plan to the commission to now submit a copy of the plan to the executive administrator of the Board; directs entities that are required to submit a plan to the executive administrator of the Board, directs entities that are required to submit a water conservation plan to the Board or the commission to annually report on their progress to the executive administrator of the Board; allows for commission enforcement of the new provisions; and requires that the Board and commission jointly adopt rules to identify the minimum requirements and submission deadlines required by Subchapter K and to provide for enforcement.

Finally, Section 18 of HB 4 requires that the Board and the commission jointly adopt rules as required by TWC, §16.402(e), not later than January 1, 2008.

SECTION BY SECTION DISCUSSION

Subchapter A, Water Conservation Plans

The commission adopts this subchapter to implement water conservation plan provisions of SB 3 and HB 4 from the 80th Legislature. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new TWC provisions related to water conservation.

The commission adopts §288.1, Definitions, to add a definition for "Best management practices." The definition adopted by the commission is from the definition of "Best management practices" in TWC, §11.002, as amended by SB 3 and HB 4. TWC, §13.146, as added by SB 3 and HB 4, 80th Legislature, require that water conservation plans contain appropriate best management practices as defined by TWC, §11.002. The definitions following "Best management practices" are renumbered to accommodate the new term.

Subchapter C, Required Submittals

The commission adopts amendments to this subchapter to implement water conservation plan provisions of SB 3 and HB 4 from the 80th Legislature. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new TWC provisions related to water conservation. In response to comment, the commission corrected the spelling of the word "submittal" in the heading to Subchapter C.

The commission adopts §288.30, Required Submittals, to contain the submittal requirements that would apply to water conservation plans.

The commission adopts §288.30(8) to specifically change the wording for "Other submissions" to "Additional submissions with a water right application" to differentiate between the submission of water conservation plans to the commission and the additional submissions of water conservation plan submissions to the Board. In response to comment, the commission removed the phrase "for new or additional state water" after the word "application" in the catchline.

The commission adopts §288.30(10), submissions to the executive administrator of the Texas Water Development Board, to contain the deadlines for water conservation plans and annual report submissions to the Board. This adopted new paragraph also provides for enforcement by the commission over violations of the Board's rules relating to water conservation plans and annual reports as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(A) to require retail public water suppliers providing water service to 3,300 or more connections to submit a water conservation plan to the executive administrator of the Board no later than May 1, 2009, and every five years after that date as provided by TWC, §13.146, as added by SB 3 and HB 4, 80th Legislature. In response to comment, the commission added the phrase "and using appropriate best management practices" after "of Subchapter A of this chapter."

The commission adopts §288.30(10)(B) to require each entity that is required to submit a water conservation plan to the commission to submit a copy of the plan to the executive administrator of the Board no later than May 1, 2009, and every five years after that date as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(C) to mandate that each entity that is required to submit a water conservation plan to the Board or the commission also file an annual report with the Board on the entity's progress in implementing their plan not later than May 1, 2010, and annually thereafter as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(D) to implement water conservation plan mandates of SB3 and HB4 to provide for enforcement by the commission over violations of the Board's rules relating to water conservation.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedures Act. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rule is to implement water conservation provisions enacted in SB 3 and HB 4, 80th Legislature. Generally, the intent of these adopted water conservation provisions is to protect the environment and benefit the waters of the state, thus furthering the state's policy of maintaining the biological soundness of the state's rivers, lakes, bays and estuaries.

The adopted rulemaking is not a "major environmental rule" because the adopted rules will not "adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state" because the rules are intended to conserve water for environmental reasons and for future beneficial uses. It is not anticipated that the cost of complying with the adopted amendments will be significant with respect to the economy as a whole; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

This rulemaking does not qualify as a major environmental rule because it will not have an adverse economic effect. Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major

environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because the adopted rules: 1) are specifically required by state law, namely the TWC, and do not exceed a standard set by federal law and; 2) do not exceed the express requirements of the TWC; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) the adopted rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the adopted rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225

The commission invited public comment of the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted amendments to Chapter 288 and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The intent of the adopted rules is to implement water conservation provisions enacted in SB 3 and HB 4, 80th Legislature.

The adopted rules would substantially advance the intent of the rulemaking by setting forth a definition of "Best management practices" and requiring the submission of water conservation plans and annual reports on the implementation of water conservation measures to the commission and the executive administrator of the Board.

Promulgation and enforcement of these adopted rules will constitute neither a statutory nor a constitutional taking of private real property. The adopted regulations do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner's right to property. More specifically, these rules implement water conservation measures and reporting requirements which do not impose any burdens or restrictions on private real property. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et. seq.,* and therefore must be consistent with all applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The public comment period for this rulemaking closed on October 9, 2007. The commission received comments from the National Wildlife Federation (NWF), Lone Star Chapter of the Sierra Club (Sierra Club), and Environmental Defense (ED).

NWF, Sierra Club, and ED suggested modifications to the proposed rules to clarify their applicability as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

NWF, Sierra Club, and ED commented that in the heading to Subchapter C the commission misspelled the word "submittal."

The commission responds that it has corrected the spelling in the heading to Subchapter C.

NWF, Sierra Club, and ED commented that in §288.30(8) the proposed new language referring to additional submissions "with a water right application for new or additional state water" is misleading and confusing and suggest that the phrase "for new or additional state water" should be omitted. NWF, Sierra Club, and ED state that adding language purporting to limit additional submissions only to applications seeking new or additional state water would be inconsistent with 30 TAC §295.9(4) and would create ambiguity. Additionally, NWF, Sierra Club, and ED stated that the proposed limitation would be inconsistent with the Texas Supreme Court's decision in *City of Marshall v. City of Uncertain,* 206 S.W.3rd 97 (Tex. 2006).

The commission acknowledges that 30 TAC §295.9(4) may require a water conservation plan and/or drought contingency plan for some water right applications that do not request either new or additional state water. In response to comments, the commission deleted the words "new or additional" in §288.30(8) to clarify that water conservation plans may be required for applications that do not require a new appropriation of state water. It was not the intention of the commission to change the commission's practice of requiring water conservation plans by adding the words "new or additional."

NWF, Sierra Club, and ED commented that the commission does not reference the term "best management practices" in its proposed or existing rule. NWF, Sierra Club, and ED suggest a change to the first sentence of §288.30(10)(A) to include the language *"and using appropriate best management practices"* after the phrase "of this chapter."

The commission agrees with the comment in reference to the term "best management practices" in the rule and adopts §288.30(10)(A) to include the language "and using appropriate best management practices."

NWF, Sierra Club, and ED commented that the language of §288.30(10)(A) should address the situation where an existing supplier grows to the point of having to prepare a plan. NWF, Sierra Club, and ED also commented that the commission should include language in §288.20(10)(A) to ensure that retail water suppliers which are required to begin filing plans at

some future date would file updates to such plans on the same deadlines as water suppliers currently subject to the rules.

The commission disagrees with the comment regarding the new 3,300 connection retail public utilities. The language in the first part of §288.30(10)(A) that requires retail public water supplies providing water service to 3,300 or more connections would include a utility that grows to 3,300 connections. The second part regarding "new" retail public utilities providing service to 3,300 connections would include any newly built system. The commission can require the water conservation plans to be submitted with the plans to construct a 3,300 connection system, whereas the changes suggested by the commenter would force the commission to wait until the "new" system is actually providing service to 3,300 connections. No change has been made in response to this comment.

NWF, Sierra Club, and ED stated that TWC, §16.402(b) requires each entity that is required to submit a water conservation plan also to report annually on progress in implementing the plan. NWF, Sierra Club, and ED stated that TWC, §16.402(e), directs the Texas Water Development Board and the TCEQ to jointly develop rules identifying minimum requirements and implementation deadlines for such reports. NWF, Sierra Club, and ED commented that the proposed rules do not address minimum requirements for annual reports and, therefore, NWF, Sierra Club, and ED assume that the commission will address this issue in a subsequent rulemaking.

The commission responds that the minimum requirements for the annual reports on progress in implementing water conservation plans that will be submitted to the Board will be included in the Board's rules and not in the commission's rules. TWC, §16.402(c), as amended by SB 3 and HB 4, 80th Legislature, requires that the executive administrator of the Board determine compliance with the minimum requirements. No change has been made in response to this comment.

SUBCHAPTER A. WATER CONSERVATION PLANS

30 TAC §288.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. Finally, TWC, §16.402(e), requires that the Board and the commission jointly adopt rules implementing provisions of SB 3 and HB 4 from the 80th Legislature.

The adopted amendment implements TWC, §11.002 and §16.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. REQUIRED SUBMITTALS

30 TAC §288.30

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in Chapter 13 of the TWC or implied in Chapter 13 of the TWC, necessary and convenient to the exercise of this power and jurisdiction. Finally, TWC, §16.402(e) requires that the board and the commission jointly adopt rules implementing provisions of House Bill 4 and Senate Bill 3 from the 80th Legislature.

The adopted amendment implements TWC, §13.146 and §16.402.

§288.30. Required Submittals.

In addition to the water conservation and drought contingency plans required to be submitted with an application under §295.9 of this title (relating to Water Conservation and Drought Contingency Plans), water conservation and drought contingency plans are required as follows.

(1) Water conservation plans for municipal, industrial, and other non-irrigation uses. The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other non-irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter (relating to Water Conservation Plans). The water conservation plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for municipal, industrial, and other non-irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(2) Implementation report for municipal, industrial, and other non-irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(3) Water conservation plans for irrigation uses. The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 10,000 acre-feet a year or more for irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter. The water conservation plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(4) Implementation report for irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(5) Drought contingency plans for retail public water suppliers. Retail public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter (relating to Drought Contingency Plans) to the executive director after adoption by its governing body. The retail public water system shall provide a copy of the plan to the regional water planning group for each region within which the water system operates. These drought contingency plans must be submitted as follows.

(A) For retail public water suppliers providing water service to 3,300 or more connections, the drought contingency plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the retail public water suppliers providing water service to 3,300 or more connections shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and submit the plan to the executive director within 90 days of adoption.

(B) For all the retail public water suppliers, the drought contingency plan must be prepared and adopted not later than May 1, 2005 and must be available for inspection by the executive director upon request. Thereafter, the retail public water suppliers shall prepare and adopt the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new retail public water supplier providing water service to less than 3,300 connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and shall make the plan available for inspection by the executive director upon request.

(6) Drought contingency plans for wholesale public water suppliers. Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, the wholesale public water suppliers shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the regional water planning group for each region within which the wholesale water supplier operates.

(7) Drought contingency plans for irrigation districts. Irrigation districts shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005, after adoption by the governing body of the irrigation district. Thereafter, the irrigation districts shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must be submitted to the executive director within 90 days of adoption by the governing body of the irrigation district. Irrigation districts shall also provide a copy of the plan to the regional water planning group for each region within which the irrigation district operates.

(8) Additional submissions with a water right application for state water. A water conservation plan or drought contingency plan required to be submitted with an application in accordance with §295.9 of this title must also be subject to review and approval by the commission.

(9) Existing permits. The holder of an existing permit, certified filing, or certificate of adjudication shall not be subject to enforcement actions nor shall the permit, certified filing, or certificate of adjudication be subject to cancellation, either in part or in whole, based on the nonattainment of goals contained within a water conservation plan submitted with an application in accordance with §295.9 of this title or by the holder of an existing permit, certified filing, or certificate of adjudication in accordance with the requirements of this section.

(10) Submissions to the executive administrator of the Texas Water Development Board.

(A) Water conservation plans for retail public water suppliers. For retail public water suppliers providing water service to 3,300 or more connections, a water conservation plan meeting the minimum requirements of Subchapter A of this chapter and using appropriate best management practices must be developed, implemented, and submitted to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive administrator within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a water conservation plan within 180 days of commencement of operation, and submit the plan to the executive administrator of the Texas Water Development Board within 90 days of adoption.

(B) Water conservation plans. Each entity that is required to submit a water conservation plan to the commission shall submit a copy of the plan to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group.

(C) Annual reports. Each entity that is required to submit a water conservation plan to the Texas Water Development Board or the commission, shall file a report not later than May 1, 2010, and annually thereafter to the executive administrator of the Texas Water Development Board on the entity's progress in implementing the plan.

(D) Violations of the Texas Water Development Board's rules. The water conservation plans and annual reports shall comply with the minimum requirements established in the Texas Water Development Board's rules. The Texas Water Development Board shall notify the commission if the Texas Water Development Board determines that an entity has not complied with the Texas Water Development Board rules relating to the minimum requirements for water conservation plans or submission of plans or annual reports. The commission shall take appropriate enforcement action upon receipt of notice from the Texas Water Development Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§290.38, 290.39, 290.41, 290.42, 290.44 - 290.47, 290.101 - 290.104, 290.106 - 290.110, 290.112 - 290.114, 290.117 - 290.119, 290.121, 290.122, 290.272, 290.273, 290.275, and the repeal of §290.111. The commission adopts new §§290.111, 290.115, and 290.116.

Sections 290.39, 290.41, 290.44, 290.45, 290.47, 290.101, 290.102, 290.104, 290.106, 290.107, 290.108, 290.110, 290.114, 290.117, 290.118, 290.272, 290.273, 290.275, and the repeal of §290.111 are adopted *without changes* as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4876) and will not be republished. Sections 290.38, 290.42, 290.46, 290.103, 290.109, 290.111, 290.112, 290.113, 290.115, 290.116, 290.119, 290.121, and 290.122 are adopted *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purposes of the adopted amendments and new rules are to implement federal regulations pertaining to the safety of drinking water from groundwater and surface water sources. The adopted amendments also limit the exposure of the public to waterborne disease and enhance the customer's ability to know if there is something harmful in their drinking water. These amendments and new rules are adopted in response to the United States Environmental Protection Agency (EPA) Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2) and Long Term 2 Enhanced Surface Water Treatment Rule (LT2) promulgated in January 2006; the Ground Water Rule (GWR) promulgated in October 2006; and the Public Notification Rule (PNR) promulgated in 2000. These rules are necessary for the state to maintain primacy for regulating public water systems (PWSs).

DBP2 provides public drinking water customers more equitable protection from the risks of disinfection byproducts. Its provisions include a one-year period of EPA-required increased early implementation sampling called the Initial Distribution System Evaluation (IDSE) that will be used to select new compliance monitoring sites; new compliance determination methods; operational evaluation level reporting; increased detail for currently required monitoring plans; and updated analytical methods.

LT2 provides increased protection from the protozoan *Cryptosporidium* found in surface water. Its provisions include a special period of increased early implementation sampling to determine the concentration of *Cryptosporidium* oocysts in source water; new required treatment levels for *Cryptosporidium* removal determined on a plant-by-plant basis; defined technologies for *Cryptosporidium* removal called the "microbial toolbox"; and updated analytical methods.

The GWR provides greater protection from pathogens to customers of PWSs that provide drinking water, in part or in whole, from sources of groundwater. Provisions of EPA's rule include raw water sampling at wells following any total coliform detection in a distribution system; required corrective action if fecal indicators are detected in a well; newly defined violations for the presence of fecal contaminants in raw water; and updated analytical methods.

TCEQ adopted requirements of the federal PNR in 2002, but three provisions remain to be added to our rule language. First, the rules require all public water systems that must issue public notice to certify in writing that the notice has been sent. Second, the rules change the amount of time in which a public water system must notify the TCEQ and its customers of an acute violation from one business day to 24 hours. Third, the rules ensure appropriate enforcement and tracking of public notice violations by including a reference to public notice violations under each constituent's compliance determination subsection.

The commission also adopts changes to ensure consistency of the state rules with the existing federal Total Coliforms (Including Fecal Coliforms and E. Coli) rule (TCR) and Disinfectants and Disinfection Byproducts rule (DBP1).

Additionally, the adopted rules reflect changes to the Texas Health and Safety Code (THSC), §341.033(i), made during the 79th Legislature, regarding homeland security. Finally, the commission adopts the definition of "process control duties" from 30 TAC §30.387, to this chapter.

Throughout the preamble the commission notes that the amendments that it is making are being adopted to make its rules consistent with the federal rules. When the commission uses the words "consistent with" in the preamble they mean the following: Where the EPA provided flexibility for the state to implement the federal rules, the commission is proposing rules that provide standards consistent with the federal directives and that fit with existing state rules. Where EPA did not provide flexibility to the states, the commission has incorporated the federal rule requirements into Chapter 290 but changed the language, without changing the regulatory requirements, to fit the state rules.

SECTION BY SECTION DISCUSSION

In addition to implementation of the federal laws discussed previously, the commission adopts administrative changes throughout the adopted rule to reflect the agency's current practices and to conform with Texas Register and agency guidelines. These changes include updating references to the TCEQ's predecessor agencies, updating cross-references, deleting effective dates that have already passed, and correcting typographical, spelling, and grammatical errors.

Subchapter D: Rules and Regulations for Public Water Systems

Subchapter D contains requirements for the physical facilities associated with public water systems. TCEQ must review and approve plans for facilities under EPA's special primacy conditions of the federal LT2 in 40 Code of Federal Regulations (CFR) §141.2.

Section 290.38, Definitions, contains definitions related to the design, pressure, flow, and treatment requirements that are contained in Subchapter D.

The commission adopts §290.38 to add definitions found in LT2 and renumbers the current definitions to maintain alphabetical order.

Specifically, the commission adopts §290.38 to add definitions for the following terms: bag filter; cartridge filter; filtrate; and membrane filtration to incorporate definitions in 40 CFR Part 142.

The commission also adopts §290.38 to add definitions for the following terms: challenge test; direct integrity test; indirect integrity monitoring; log removal value (LRV); membrane LRVC-Test; membrane module; membrane sensitivity; membrane unit; quality control release value (QCRV); resolution; and sensitivity. The term "log removal" is a term of art that describes the percent removal of a constituent: 1-log removal equals 90% removal; 2-log removal equals 99% removal; and so forth. These definitions are based on definitions in the federal LT2 in 40 CFR §141.719 and Glossary EPA 815-R-06-009, the EPA Membrane Filtration Guidance Manual.

The commission also adopts §290.38 to add the definitions of "chemical disinfectant" and "reactor validation testing" to incorporate definitions in the federal LT2 in 40 CFR §141.720 and the EPA 815-R-06-007, EPA Ultraviolet Disinfection Guidance Manual Glossary, and to amend the definition of "disinfectant" to differentiate this definition from the definition of "chemical disinfectant."

The commission moves the definition for "innovative/alternate treatment" from §290.42(g) to §290.38 for consistency with the organizational principle that definitions be grouped in this section. This definition is also amended for consistency with the microbial toolbox options for meeting *Cryptosporidium* treatment requirements in the federal LT2 in 40 CFR §141.715.

The commission deleted the definition of "Uniform Fire Code" in §290.38(73) and added the definition of "International Fire Code" in §290.38(33) in response to a comment. The definitions following the term "International Fire Code" have been renumbered accordingly.

The commission moves the definition of "process control duties" from §30.387(5) to §290.38 because the definition applies to allowable activities at public water systems, not to individuals who are licensed water operators. Chapter 30 contains requirements for becoming licensed as a public water system operator, as contrasted with Chapter 290, Subchapter F, which contains the requirements related to what types of operators a public water system must hire, and what duties those personnel may perform. The rule language of Chapter 30 related to water operators was revised during the Occupational Licensing rule package by deleting the definition of "process control duties" and moving it to Chapter 290. The language was deleted from those rules based on an interoffice agreement that it is better placed in Chapter 290. The docket number for the Occupational Licensing rule package is 2006-1699-RUL and the Rule Project Number is 2006-041-030-CE. The Occupational Licensing rule package was adopted by the commission during agenda in September 2007. The Occupational Licensing rule package was published in the *Texas Register* on September 21, 2007, and was effective September 27, 2007.

Section 290.39, General Provisions, describes how public water systems must submit plans or exception requests.

The commission adopts new §290.39(j)(1)(E) to specifically state the requirements of the federal LT2 in 40 CFR §141.719(b)(2)(viii) that describes how the executive director will determine the ability of modified membrane modules to inactivate microorganisms.

The commission adopts new §290.39(l)(4) to specifically state the requirements of the federal LT2 in 40 CFR §141.721(f) that the executive director be able to establish requirements for systems that have been issued an exception.

The commission adopts §290.41, Water Sources, to incorporate the requirements for sources of water that are used as drinking water, for example, location and construction requirements for wells or surface water intake structures.

The commission adopts §290.41(c)(3)(C) to reference the most current version of the American Water Works Association (AWWA) Standard for Water Wells and the most current standard's appendices.

The commission adopts new §290.41(d)(5) to incorporate 40 CFR §141.710(f) which requires systems with new springs or similar source to perform microbiological source water quality testing to determine the level of treatment required under LT2.

The commission adopts §290.41(e)(1)(F) to include the proper spelling of the word *Escherichia* and the proper italicization of the words *E. coli*, *Giardia*, and *Cryptosporidium*.

The commission adopts new §290.41(e)(1)(G) to incorporate 40 CFR §141.710(f) requiring systems with new surface water intakes, groundwater sources under the direct influence of surface water, and bank filtration wells to perform microbiological source water quality testing to determine the level of treatment, known as Bin Classification, required under LT2.

The commission adopts §290.42, Water Treatment, to incorporate design and construction requirements related to drinking water treatment. It also provides the conditions under which a treatment process can be considered acceptable to meet the health-based standards of Subchapter F.

The commission adopts §290.42(a)(2) by changing the term "underground water" to "groundwater" to be consistent with the use of the term "groundwater" throughout the subchapter.

The commission adopts new §290.42(b)(8) to incorporate the requirements of the federal GWR in 40 CFR §141.403(a)(6)(iv) that the executive director may require viral treatment on groundwater systems based on raw water sampling results showing the presence of fecal indicator organisms.

The commission adopts §290.42(c)(1) to incorporate the requirements of the federal LT2 in 40 CFR §141.711(a) that systems using spring or other water sources with raw water monitoring results showing the presence of fecal indicators may be required to design treatment systems to achieve higher levels of *Cryptosporidium* treatment.

The commission adopts §290.42(c)(6) to eliminate the date because the effective date of the regulation change has passed.

The commission adopts §290.42(d)(1) to incorporate the requirements of the federal LT2 in 40 CFR §141.711(a) that systems using surface water sources with raw water monitoring results showing elevated levels of *Cryptosporidium* will be required to design treatment systems to achieve higher levels of *Cryptosporidium* treatment.

The commission adopts §290.42(d)(3) and (11)(E)(ii) to eliminate the dates because the effective dates of the regulation changes have passed.

Based on a comment, the commission replaced the definition of "Uniform Fire Code" with the definition of "International Fire Code" in §290.38. Because of this change, the commission amended the reference in §290.42(e)(4)(C) from "Uniform Fire Code (UFC)" to "International Fire Code (IFC)."

Based on a comment, the commission replaced the definition of "Uniform Fire Code" with the definition of "International Fire Code" in §290.38. Because of this change, the commission amended the reference in §290.42(e)(6) from "UFC" to "IFC."

The commission adopts §290.42(g) to include the review and design requirements of bag and cartridge filtration, membrane filtration, and ultraviolet (UV) disinfection as specified in 40 CFR §141.119 and §141.120. Currently, the only innovative treatment with specific requirements is package treatment. Bag and cartridge filtration, membrane filtration, and ultraviolet (UV) disinfection are alternate treatment techniques included in the LT2 "microbial toolbox" which are identified as the most likely to be used by Texas systems to meet the new LT2 requirements. The addition of the other innovative treatments with specific design requirements under the federal LT2 from EPA creates the need for new, separate paragraphs.

Specifically, the commission adopts §290.42(g) by moving the definition of "innovative/alternate treatment" systems from the text of this subsection to §290.38 for consistency with the organizational principle that groups all definitions related to this subchapter in §290.38.

The commission adopts §290.42(g) to incorporate the requirement that the executive director have the ability to require and review pilot protocols prior to pilot studies. The amendment is consistent with existing rules and new federal law. The existing requirements of §290.39(l) and the new requirements of the federal LT2 in 40 CFR §141.119 and §141.120 include provisions for challenge studies and validation studies. Existing §290.121 also requires that all compliance samples have a monitoring plan approved by the executive director.

The commission adopts new §290.42(g)(1) to contain the sentence in existing §290.42(g) regarding the design requirements for package-type treatment systems.

The commission adopts new §290.42(g)(2) to incorporate the requirements of the federal LT2 in 40 CFR §141.719(a) that bag and cartridge filtration systems can receive microbiological treatment credit if specified criteria are met.

The commission adopts new §290.42(g)(2)(A) to incorporate the criteria of 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if the entire plant flow is treated by the filters.

The commission adopts new §290.42(g)(2)(B) to incorporate the criteria of 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if approved by the executive director based on challenge testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission adopts new §290.42(g)(2)(B)(i) to incorporate the criteria of 40 CFR §141.719(a)(1) that bag and cartridge filtration systems must apply a factor of safety to the log removal credit determined from challenge testing.

The commission adopts new §290.42(g)(2)(B)(ii) to incorporate the criteria of 40 CFR §141.719(a)(2) that bag and cartridge filtration systems can only receive microbiological treatment credit if the challenge testing is performed on bag or cartridge filtration devices that are identical to the filtration devices that will be used by the public water system.

The commission adopts new §290.42(g)(2)(B)(iii) to incorporate the criteria of 40 CFR §141.719(a)(2) that bag and cartridge filtration systems can only receive microbiological treatment credit if the challenge testing is performed on bag or cartridge filtration devices that are arranged in an identical configuration to the filtration devices that will be used by the public water system.

The commission adopts new §290.42(g)(2)(B)(iv) to incorporate the criteria of 40 CFR §141.719(a)(1) that bag and cartridge filtration systems can receive microbiological treatment credit based on challenge testing performed before January 5, 2006 if the testing met the EPA criteria, is submitted by the system and is approved by the executive director.

The commission adopts new §290.42(g)(2)(B)(v) to incorporate the criteria of 40 CFR §141.719(a)(10) that bag and cartridge filtration systems can only receive microbiological treatment credit if the bag or cartridge filtration devices used in the challenge study have not been modified in a manner that could change the removal efficiency of the filter and to provide that if the bag or cartridge filtration device has been modified in this manner, a new challenge study must be conducted.

The commission adopts new §290.42(g)(2)(C) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(a) that bag and cartridge filtration systems can only receive microbiological treatment credit if the membrane systems have been challenge tested, have the ability for direct and indirect integrity testing, and are designed to meet the other requirements of this section.

The commission adopts new §290.42(g)(3) to incorporate the requirements of 40 CFR §141.719(b) describing the conditions under which membrane filtration systems can receive microbiological treatment credit under LT2.

The commission adopts new §290.42(g)(3)(A) to incorporate the criteria of the federal LT2 in 40 CFR §141.719(b)(2) that membrane filtration systems can only receive microbiological treatment credit if approved by the executive director based on challenge testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission adopts new §290.42(g)(3)(A)(i) to incorporate the criteria of 40 CFR §141.719(b)(2)(v) - (vii) that membrane systems can only receive microbiological treatment credit if, be-

fore stating the challenge tests, the system submits and receives executive director approval for the challenge testing protocol. That protocol must include the plan for testing the membranes and for calculating how well the membranes remove microbes.

The commission adopts new §290.42(g)(3)(A)(ii) to incorporate the criteria of 40 CFR §141.719(b)(2)(i) that membrane systems can only receive microbiological treatment credit if the challenge testing is performed on membrane filtration devices that are identical to the filtration devices that will be used by the public water system. If smaller-scale membrane devices are used in the challenge testing, then they must be identical in material and similar in construction to the filtration devices that will be used by the public water system.

The commission adopts new §290.42(g)(3)(A)(iii) to incorporate the criteria of 40 CFR §141.719(b)(2) that membrane filtration systems can receive microbiological treatment credit based on challenge testing performed before January 5, 2006, if the testing met the EPA criteria, is submitted by the system and is approved by the executive director.

The commission adopts new §290.42(g)(3)(A)(iv) to incorporate the criteria of 40 CFR §141.719(b)(2)(viii) that membranes can only receive microbiological treatment credit if the membrane devices used in the challenge study have not been modified in a manner that could change the removal efficiency of the filter, or the quality control release value. If a membrane filtration device has been modified in this manner, a new challenge study must be conducted.

The commission adopts new §290.42(g)(3)(B) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(b)(3) that membrane filtration system can only receive microbiological treatment credit if the membrane systems is designed to conduct and record the results of direct integrity tests demonstrating a removal efficiency equal to or greater than the removal credit awarded by the executive director.

The commission adopts new §290.42(g)(3)(B)(i) to incorporate the criteria of 40 CFR §141.719(b)(3)(i), that membrane systems be designed to allow direct integrity testing of each membrane unit.

The commission adopts new §290.42(g)(3)(B)(ii) to incorporate the criteria of 40 CFR §141.719(b)(3)(ii), that membrane systems be designed to allow direct integrity testing that has a resolution of 3 micrometers or less.

The commission adopts new §290.42(g)(3)(B)(iii) to incorporate the criteria of 40 CFR §141.719(b)(3)(iii), that membrane systems be designed to allow direct integrity testing that has a sensitivity to verify log removal credit that meets EPA criteria.

The commission adopts new §290.42(g)(3)(B)(iv) to incorporate the ability of the state described in 40 CFR §141.719(b)(3)(iv) to approve less frequent direct integrity testing.

The commission adopts new §290.42(g)(3)(C) to incorporate the requirement of 40 CFR §141.719(b)(4) and (4)(i) that membrane filtration systems can only receive microbiological treatment credit if the membrane system is designed to conduct and record the results of continuous indirect integrity tests, describes the equipment required to perform these tests, and restates the ability of the state to allow alternative monitoring technology as contained in existing §290.39(1).

The commission adopts new §290.42(g)(3)(D) and (D)(i) and (ii) to incorporate the requirement of 40 CFR §141.719(b)(1) that the microbiological treatment credit that membrane filtration systems can receive is no greater than the lower of the credits received through challenge testing or direct integrity testing.

The commission adopts new §290.42(g)(3)(E) to incorporate the requirement of 40 CFR §141.719(b) that membrane filtration systems can only receive microbiological treatment credit if the membrane systems have been challenge tested, have the ability for direct and indirect integrity testing, and are designed to meet the other requirements of this section.

The commission adopts new §290.42(g)(3)(F) to incorporate the requirement of EPA 815-R-06-009, EPA Membrane Filtration Guidance Manual, that membrane filtration systems can only receive microbiological treatment credit if the membrane systems are designed with the described cross connection control measures.

The commission adopts new §290.42(g)(4) to incorporate the requirements of 40 CFR §141.73(d) describing how bag, cartridge and membrane filters can receive microbial credit before the compliance date of LT2. In response to comment, the commission clarified that a system can receive up to a 2.0-log removal credit for *Cryptosporidium* and up to a 3.0-log removal credit for *Giardia*.

The commission adopts new §290.42(g)(5) to incorporate the requirements of the federal LT2 in 40 CFR §141.720(d)(1) that UV light reactors may receive microbiological treatment credit.

The commission adopts new §290.42(g)(5)(A) to incorporate the criteria of 40 CFR §141.720(d)(1) that UV light reactors can only receive microbiological treatment credit if the UV light reactors are located after the water has been treated with filtration to remove turbidity that would interfere with disinfection. Turbidity is a measurement of the cloudiness of water, used as a surrogate measurement indicating the potential presence of pathogens. Water higher in turbidity is less safe than water with low turbidity.

The commission adopts new §290.42(g)(5)(B) to incorporate the criteria of 40 CFR §141.720(d)(2) that UV light reactors can only receive microbiological treatment credit if approved by the executive director based on validation testing that must be conducted in accordance with criteria established by EPA and the executive director.

The commission adopts new §290.42(g)(5)(B)(i) to incorporate the criteria of 40 CFR §141.720(d)(2)(i) that UV light reactors can only receive microbiological treatment credit if the validation testing addresses the impact of UV absorbance, lamp fouling, lamp aging, on-line sensor uncertainty, hydraulic turbulence factors, effect of critical failures, piping configuration, lamp and sensor locations, and any other data deemed necessary by the executive director.

The commission adopts new §290.42(g)(5)(B)(ii) to incorporate the criteria of 40 CFR §141.720(d)(2)(ii) that UV light reactors can only receive microbiological treatment credit if the validation testing is performed on a UV light reactor that is essentially identical to the UV light reactor that will be used by the public water system and that the water used in the validation testing is essentially identical to the water used by the system.

The commission adopts new §290.42(g)(5)(C) to incorporate the requirement of the federal LT2 in 40 CFR §141.720(d)(3)(i) that a UV light reactor system can only receive microbiological treatment credit if it is designed to conduct and record parameters to determine if the reactors are operating within the validated conditions approved by the executive director.

Section 290.44, Water Distribution, contains the design requirements for drinking water distribution systems. The commission adopts §290.44(h)(4)(A) to change the words "professional certification" to "license." All previously issued backflow prevention assembly tester certificates expired December 1, 2002. This certification was replaced by licensing in 30 TAC §30.51(c).

Section 290.45, Minimum Water System Capacity Requirements, contains the minimum water system capacity requirements. The commission adopts §290.45(c)(1)(B)(ii) to correct the typographical error of "gpm" to gallons per unit.

The commission adopts the figure, Table A, in §290.45(d)(1) to correct the units for capacity by adding the phrase "/Day."

Section 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, contains the minimum acceptable operating requirements for public water systems, for example, record retention periods. In response to comment, the commission has changed §290.46 to be consistent with the federal requirements.

The commission adopts §290.46(e)(2)(C) to eliminate the date because the effective date of the regulation change has passed.

The commission adopts §290.46(f)(3)(B)(iv) to change the title of §290.111 to be consistent with the adopted name change for that section.

The commission adopts new §290.46(f)(3)(B)(vii) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(a) that raw surface water monitoring results be kept for three years after bin classification. Bin classification is the process under the federal LT2 whereby the executive director establishes the level of microbial inactivation that is required at individual water treatment plants treating surface water or groundwater under the direct influence of surface water.

The commission adopts new §290.46(f)(3)(B)(viii) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(b) that public water systems retain records related to system notification to the executive director of treatment in lieu of monitoring for three years.

The commission adopts new §290.46(f)(3)(B)(ix) to incorporate the requirement of the federal LT2 in 40 CFR §141.722(c) that public water systems retain records of all surface water treatment monitoring that is used to determine log inactivation or removal for three years. In response to comment, the commission amended §290.46(f)(3)(B)(ix) to differentiate the microbial toolbox records from the CFE and IFE turbidity monitoring records.

In response to comment, the commission changed §290.46 to conform with 40 CFR §141.33(f) by moving the requirement for monitoring plans from §290.46(f)(3)(D)(iv), which lists records that must be kept for five years, to §290.46(f)(3)(E)(ix), which lists records that must be kept for ten years, to be consistent with the federal requirements. Because of this deletion, the commission renumbered the subsequent clauses.

The commission adopts new §290.46(f)(3)(D)(v) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(3) that all corrective action plans and schedules for groundwater systems be kept by the public water system for five years.

The commission adopts new §290.46(f)(3)(D)(vi) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(3) that all documentation of the reason for an invalidated fecal indicator source sample be kept by the public water system for five years.

The commission adopts new §290.46(f)(3)(D)(vii) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(4) that all notifications to wholesale systems due to coliform positive samples be kept by the public water system for five years.

The commission adopts new §290.46(f)(3)(D)(viii) to incorporate the requirement of existing 40 CFR §141.153 that all consumer confidence report compliance documentation be kept for five years, consistent with the organization of record retention requirements. Record retention requirements for reports required by the drinking water standards of Subchapter F are contained in §290.46(f) as part of the minimum operating requirements for public water systems.

The commission adopts new §290.46(f)(3)(E)(v) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(c)(4) that Initial Distribution System Evaluation (IDSE) reports be kept by the public water system for ten years. In response to comment, the commission revised §290.46(f)(3)(E)(v) to include the retention time requirements for IDSE plan, report, approval letters, and other compliance documentation to conform with 40 CFR §141.601(a)(4).

The commission adopts new §290.46(f)(3)(E)(vi) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(c)(4) that any notification of modifications to an IDSE report be kept by the public water system for ten years.

The commission adopts new §290.46(f)(3)(E)(vii) to incorporate the requirement of the federal DBP2 in 40 CFR §141.601(b)(4) that 40/30 certifications be kept by the public water system for ten years.

The commission adopts new §290.46(f)(3)(E)(viii) to incorporate the requirement of the federal GWR in 40 CFR §141.405(b)(1) that documentation of corrective actions be kept by the public water system for ten years.

In response to comment, the commission moved the record retention requirements for monitoring plans required by §290.121(b) from §290.46(f)(3)(D)(iv) to §290.46(f)(3)(E)(ix). Because of this change, monitoring plans have to be kept for ten years instead of five years, to be consistent with the federal requirements of 40 CFR §141.33(f).

The commission adopts §290.46(g) to spell out the acronym for American Water Works Association at its first usage.

The commission adopts §290.46(j) by changing the name of §290.47(d) from "Customer Service Inspection Certificate" to "Appendices" to reflect the existing name of §290.47. Additionally, the commission includes the acronym for the Texas State Board of Plumbing Examiners in §290.46(j)(1)(A).

The commission adopts §290.46(j)(1)(B) to change the words "certification or endorsement" to "license." All previously issued customer service inspection endorsements expired. This endorsement was replaced by a license in existing §30.81(c).

The commission adopts §290.46(s) to incorporate requirements of the federal LT2 in 40 CFR §141.719(b) and 40 CFR §141.720(d) to include testing requirements for membrane systems and UV light.

The commission adopts §290.46(s)(2)(C) to differentiate between the existing requirements for chemical disinfectants and the new requirements of 40 CFR §141.720(d) for the use of UV light.

The commission adopts new §290.46(s)(2)(D) to include the requirements of 40 CFR §141.720(d)(3)(i) that UV light analyzers be properly calibrated.

The commission adopts new §290.46(s)(2)(D)(i) to include the requirements of 40 CFR §141.720(d)(3)(i) that duty UV sensors be verified with reference UV sensors monthly.

The commission adopts new §290.46(s)(2)(D)(ii) to include the requirements of 40 CFR §141.720(d)(3)(i) that reference UV sensors be calibrated yearly or sooner.

The commission adopts new §290.46(s)(2)(D)(iii) to include the requirements of 40 CFR §141.720(d)(3)(i) that UV transmittance sensors be calibrated weekly.

The commission adopts new §290.46(s)(2)(E) to include the requirements of the federal LT2 in 40 CFR §141.719 that systems must verify performance of direct integrity testing and equipment as approved by the executive director.

The commission adopts new §290.46(w) to incorporate the requirements of THSC §341.003(i) for systems to have a plan to notify the commission in case of an event that negatively impacts the production and delivery of safe and adequate drinking water. Paragraphs (1) - (5) describe emergency events that trigger notification.

Section 290.47, Appendices, contains the flow chart for systems to use in determining whether a boil water notice is needed when pressure in the distribution system drops.

The commission adopts the figure, Boil Water Notification, in §290.47(e) to update the TCEQ's phone number.

The commission adopts the figure, Service Agreement, in §290.47(f) to replace the term "calibration date" with the term "Date Tested for Accuracy" as stated in §290.44(h)(4)(B) and to add a line for the certified tester to sign the form as required by §290.44(h)(4)(C).

The commission adopts §290.47(h) to replace "TNRCC" with "TCEQ" in the graphic.

Subchapter F: Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements

Subchapter F contains the maximum contaminant levels (MCLs), treatment techniques, sampling frequencies and locations, and reporting requirements for drinking water quality as provided by the EPA under the Safe Drinking Water Act (SDWA) and its amendments.

Section 290.101, Purpose, states the purpose of the drinking water standards and other requirements contained in Subchapter F. The commission adopts §290.101 to correct typographical and syntax errors. As adopted, the periods after each letter in the acronym for United States Code are removed, the term "et seq." is italicized and the period after "et seq" is removed, and the acronym "EPA" is replaced with the full name of the United States Environmental Protection Agency.

Section 290.102, General Applicability, describes the conditions under which the drinking water standards apply to a water system. The commission adopts §290.102 to correct typographical and syntax errors. The commission adopts the catchline of §290.102(a) to eliminate the initial capital letter on the word "applicability." The commission corrects the reference to the Safe Drinking Water Act in §290.102(b) by replacing the existing word "Safety" with the word "Safe," and to insert the full name of the Code of Federal Regulations before referring to the acronym "CFR." The commission adopts §290.102(d) by adding the catchline "Motion to overturn" for consistency with Agency syntax protocols. The commission adopts the catchlines in §290.102(e) and (f) to eliminate the initial capital letters on words that are not first in the catchline for consistency with Agency syntax protocols.

Section 290.103, Definitions, contains definitions related to the drinking water standards and other requirements that are contained in Subchapter D.

The commission adopts §290.103 to add definitions resulting from the new federal GWR, LT2, and DBP2, to correct typographical and syntax errors, and to renumber existing definitions to accommodate the new definitions and to maintain alphabetical order. The definitions of §290.103 are for terms used throughout Subchapter F.

The commission adopts a definition of the term "assessment source monitoring" which is used in adopted §290.109 and §290.116 as new §290.103(1) consistent with the definition in the federal GWR in 40 CFR §141.402(b) and 30 TAC §290.109(c)(4)(E).

The commission adopts a definition given in the federal DBP2 and LT2 in 40 CFR §141.2 of the concept of a combined distribution system (CDS) group of systems as new §290.103(2) as, "A CDS is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water." The commission adopts new §290.103(2)(A) to state that a CDS may be modified to eliminate minor interconnections as provided in 40 CFR §141.620(c)(8). The commission adopts new §290.103(2)(B) to provide that the CDS determination for compliance with DBP2 and LT2 can be different for a single system. The LT2 method for determining CDS based on treatment plants is adopted as new §290.103(2)(B)(i) consistent with the federal LT2 in 40 CFR §141.701. The commission adopts the DBP2 method for basing CDS on retail population served as new §290.103(2)(B)(ii) consistent with the federal DBP2 in 40 CFR §141.600(b).

The commission adopts a definition modified from the federal DBP2 in 40 CFR §141.2 of "consecutive system" to describe purchased water systems as new §290.103(6). In response to comment, the commission has removed the sentence containing the reference to "direct connection" from this definition. Also in response to comment, the commission added the phrase "other public water" and removed the word "wholesale."

The commission adopts a reference to *Cryptosporidium* and italicizes the term "*Giardia lamblia*" within the definition of "disinfection profile" in existing §290.103(4), renumbered to §290.103(7).

The commission adopts the definition of "dual sample set" as a pair of trihalomethane and haloacetic acid samples in accordance with the federal DBP2 in 40 CFR §141.2 as new §290.103(10).

The commission adopts the definition of "fecal indicators"" from the federal GWR in 40 CFR §141.402(c)(2) as new §290.103(15).

The commission adopts the definition of "finished water" as new §290.103(18) consistent with the definition of "uncovered finished water reservoir" in the federal LT2 in 40 CFR §141.2.

The commission adopts the corrective action required in response to confirmed fecal contamination of groundwater as "groundwater corrective action" in new §290.103(19), consistent

with the requirements of new §290.116 and the federal GWR in 40 CFR §141.403.

The commission adopts the definition of "groundwater correction action plan" as the plan required for a system that must take corrective action in new §290.103(20), consistent with the federal GWR in 40 CFR §141.403(a)(4) and new §290.116(b).

The commission adopts a definition of "groundwater system" consistent with the federal GWR in 40 CFR §141.400(b) as new §290.103(21).

The commission adopts "hydrogeologic sensitivity assessments" for determination of groundwater sensitivity in new §290.103(24) as provided in the federal GWR in 40 CFR §141.400(c)(5).

The commission adopts the new compliance method of taking a locational running annual average (LRAA) from the federal DBP2 in 40 CFR §141.2 as "locational running annual average" in §290.103(25).

The commission adopts the term "operational evaluation level (OEL)" as described in the federal DBP2 in 40 CFR §141.626 in new §290.103(29). In response to comment, the language from §290.115(b)(2) has been included in the definition.

The commission adopts a definition for the term "raw water" as new §290.103(30) for consistency in designating raw water monitoring for surface water and groundwater under the new federal GWR and LT2.

The commission adopts new §290.103(31) to contain the definition of the term "raw groundwater source sampling" consistent with the federal GWR in 40 CFR §141.402 and existing §290.109(c)(4).

The commission adopts the term "triggered source water monitoring" in new §290.103(35) as described in the federal GWR in 40 CFR §141.402(a)(1) and existing §290.109(c)(4)(A).

In response to comment, the commission changed its proposed definition in §290.103(37) which defined "wholesale system" to delete the implication that only a public water system that treats source water for re-sale as potable water could be a wholesale system. Instead, a wholesale system can purchase potable water and resell it for subsequent distribution, or can sell raw, untreated water on a wholesale basis. In either case, rules for wholesalers apply, so the definition was made more general.

Section 290.104, Summary of Maximum Contaminant Levels, Maximum Residual Disinfection Levels, Treatment Techniques, and Action Levels, contains a summary of MCLs, maximum residual disinfectant levels, treatment techniques, and action levels for drinking water. This summary consolidates the limits that are spread through the individual sections relating to specific contaminants.

The commission adopts §290.104 to add references to requirements added elsewhere as part of the incorporation of new federal requirements, remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

The commission adopts the table in §290.104(b) to remove references to the existing arsenic MCL effective date of January 23, 2006, because that date has passed.

The commission adopts the internal reference in §290.104(g) because the title of §290.111 is changed to "Surface Water Treatment" as a result of LT2. In §290.104(g)(1) the commission removes the initial capital letters from the term "Nephelometric Turbidity Unit." The commission adopts §290.104(g)(2) to conform to the new contents of §290.111, which is changed as a result of the incorporation of LT2.

The commission adopts §290.104(i) to change the internal reference to §290.113, and to add a reference to §290.115. Both changes result from the adopted revisions resulting from incorporation of DBP2.

Section 290.106, Inorganic Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for inorganic contaminants that may be found in drinking water sources.

The commission adopts §290.106 to include elements related to the PNR, to remove references to effective dates that have passed, to correct citations, and to correct typographical and syntax errors.

The commission deletes §290.106(a)(4) to remove references to the existing arsenic MCL effective date of January 23, 2006, because that date has passed and the commission adopts the table in §290.106(b) for the same reason.

The commission adopts new §290.106(f)(8) is adopted to explicitly identify the type of violation resulting from failure to perform a required public notification. The change is necessary for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule, to accommodate internal agency procedures for identifying violations by specific citations in the Consolidated Compliance and Enforcement Data System (CCEDS), and thus to ensure delivery of public notice violation data to EPA as part of the TCEQ's primacy requirements.

The commission adopts §290.106(g)(1) to conform to the requirement under the federal PNR of 40 CFR §141.602 requiring a system to notify the public of a nitrate violation within 24 hours, replacing the existing reference allowing this notification to occur on the next business day.

Section 290.107, Organic Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for synthetic and naturally occurring organic contaminants that may be found in drinking water sources.

The commission adopts §290.107 to eliminate a reference to a past compliance date, to include elements of the PNR, to correct references, and to correct typographical and syntax errors.

The commission deletes the catchline in §290.107(c)(2)(A)(i) to conform to agency syntax protocols.

The commission adopts §290.107(c)(2)(C)(ii) to remove the December 31, 1992 effective date, because all public water systems have completed initial compliance monitoring since that time.

The commission adopts §290.107(e) to correct the agency's address to conform to United States Postal Service requirements.

The commission adopts new §290.107(f)(3) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with EPA's Public Notification Rule requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

Section 290.108, Radionuclides Other than Radon, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for radiochemicals (other than radon) that may be found in drinking water sources.

The commission adopts §290.108 to eliminate compliance dates that have passed, to include elements of the PNR, and to correct typographical and syntax errors.

The commission adopts §290.108(a) to remove the reference to the December 8, 2003, effective date for the uranium MCL because that date has passed, and the reference to the December 31, 2007, effective date to complete initial uranium monitoring is because all systems in Texas have done initial monitoring.

The commission removes the uranium MCL effective date from §290.108(b)(1)(C). References to moot uranium monitoring effective dates are removed from §290.108(c)(1)(A)(iii), §290.108(c)(1)(A)(iii)(I), §290.108(c)(1)(A)(iii)(II) and §290.108(c)(1)(A)(iii)(III) because all required monitoring has been accomplished.

The commission adopts the TCEQ's mailing address in §290.108(e) to conform with United States Postal Service requirements.

The commission adopts new §290.108(f)(5) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification Rule (PN) Rule.

Existing §290.109, Microbial Contaminants, contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for microbial contaminants that may be found in drinking water. The existing section contains requirements from the federal TCR and is extensively amended to incorporate new elements of the federal GWR, because the GWR is intended to address microbial contamination of raw water sources. The commission changes the wording throughout §290.109 to make sampling references consistent.

The commission adopts §290.109(b) relating to MCLs for microbial contaminants to include the GWR treatment technique requirements under 40 CFR §141.403 which establish a standard for fecal microbial indicators for raw groundwater sources.

The commission adopts new §290.109(b)(1) to contain the existing MCL definitions for microbial contaminants in the distribution system in existing §290.109(b).

The commission adopts new §290.109(b)(1)(A) to incorporate existing §290.109(b)(1). The commission also adds the words "routine distribution" to specify that the samples this paragraph applies to are those routinely collected from the distribution system and to correct the MCL language as being achieved when more than 5% of samples collected in a month are coliform positive for a system that collects at least 40 routine distribution coliform samples, consistent with the federal Total Coliform Rule in 40 CFR §141.21. In response to comment, the commission removed the word "achieved" and replaced it with the words "defined as" in §290.109(b)(1)(A).

The commission adopts new §290.109(b)(1)(B) to incorporate existing §290.109(b)(2). The commission also adopts the words "routine distribution" to identify the samples referred to in these subparagraphs as those routinely collected from the distribution system. Additionally, the commission makes the MCL language consistent with the federal Total Coliform Rule in 40 CFR §141.21 as being achieved when more than 5% of samples collected in a month are coliform positive for a system that collects fewer than 40 routine distribution coliform samples. In response to comment, the commission removed the word "achieved" and replaced it with the words "defined as" in §290.109(b)(1)(B).

The commission adopts new §290.109(b)(1)(C) to identify the distribution coliform acute MCL which was not previously defined in §290.109(b). This change is to maintain consistency with the organization other of sections in Subchapter F, in which all MCLs are identified specifically in a single subsection. In response to comment, the commission removed the word "achieved" and replaced it with the words "defined as" in §290.109(b)(1)(C).

The commission adopts new §290.109(b)(2) to contain the non-detection standards for fecal indicators in raw groundwater sources as established in the GWR treatment technique requirements under 40 CFR §141.403.

The commission adopts §290.109(c) to include monitoring requirements of other fecal indicator organisms identified in the federal GWR in 40 CFR §141.402(c)(2). In addition, the commission adopts the term *E. coli* rather than *Escherichia coli* for consistency with the federal GWR in 40 CFR §141.402.

The commission adopts §290.109(c)(1)(A) to identify the routine samples referred to in this subparagraph specifically as distribution coliform samples rather than as any other type of bacteriological samples. Because the new federal rule initiates requirements for viral indicator sampling at raw sample sites as well as bacterial sampling at distribution sample sites, it is now necessary to make this distinction. The commission also adopts the word "quality" to clarify the aspects of the water that may impact sample site selection. In addition, the commission indicates that other sampling sites may be used only if adjacent to active service connections rather than potentially implying that any active or inactive service connections could be used.

The commission adopts §290.109(c)(1)(B), (c)(2), (c)(2)(A) - (c)(2)(D), (c)(2)(F), (c)(3), (c)(3)(A), (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(C) to specify and clarify that the sampling indicated in this subparagraph refers to distribution coliform samples rather than other microbial contaminants. The commission changes the wording throughout §290.109 to make sampling references consistent. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission adopts new §290.109(c)(4) to incorporate the groundwater source monitoring requirements of the federal GWR in 40 CFR §141.402.

In new §290.109(c)(4)(A), the commission approves the use of *E. coli* as a fecal indicator for raw groundwater source monitoring required under the federal GWR in 40 CFR §141.402. In §290.109(c)(4)(A)(i) and (ii), the commission incorporates the requirements of 40 CFR §141.402(a)(1) which requires public water systems to conduct triggered source monitoring if they do not provide at least 4-log treatment of viruses and are notified of a distribution coliform positive. The term "4-log" treatment means that the technology used has the ability to remove at least 99.99% of viruses present in the raw source water.

The commission adopts new §290.109(c)(4)(B) to incorporate the raw source sampling requirements of the federal GWR in 40 CFR §141.402(a)(2). The new subparagraph requires

drinking water systems using groundwater sources to take source samples within 24 hours of being notified of a distribution coliform sample positive. In new §290.109(c)(4)(B)(i) and (ii), the commission allows the extension of the 24-hour period and allows systems to sample a representative subset of groundwater sources if approved by the executive director. In new §290.109(c)(4)(B)(iii), the commission adopts the provisions under 40 CFR §141.402(a)(2)(iii) which allow systems serving fewer than 1,000 people to use the required raw source sample as one of the four required distribution repeat samples.

The commission adopts new §290.109(c)(4)(C) to incorporate the requirements under the federal GWR in 40 CFR §141.402(a)(4) that a system which purchases water from a groundwater system must notify the provider within 24 hours of a positive coliform distribution sample. In new §290.109(c)(4)(C)(i) and (ii), the commission adopts the requirements of 40 CFR §141.402(a)(4)(i) and (ii) which require wholesale systems to conduct raw source monitoring with 24 hours of being notified of the receiving system's positive distribution sample. Additionally, the wholesaler must notify its receiving systems within 24 hours of being notified that a source sample was positive for a fecal indicator.

The commission adopts new §290.109(c)(4)(D) to incorporate the requirements under 40 CFR §141.402(a)(5) which allow the primacy agency to waive the triggered source monitoring requirements under circumstances identified in the federal GWR in 40 CFR §141.402(a)(5)(i) and (ii). The commission adopts new §290.109(c)(4)(D)(i) and (ii) to allow this waiver based on distribution system deficiencies that caused the distribution coliform positive and the collection of an invalid distribution sample.

The commission adopts new §290.109(c)(4)(E) to incorporate 40 CFR §141.402(b) which allows primacy agencies to conduct assessment source monitoring on groundwater sources deemed to be susceptible to fecal contamination, prior to positive distribution coliform samples.

The commission adopts §290.109(d) to contain the analytical invalidation requirements contained in existing §290.109(c)(4). This is consistent with the organizational principle that all analytical requirements for a contaminant are contained in a single subsection. In response to comment, the commission revised the catchline from "Analytical requirements for microbial contaminants" to "Analytical and invalidation requirements for microbial contaminants."

The commission adopts new §290.109(d)(1) to contain the sample invalidation text moved from existing §290.109(c)(4). In addition to moving that paragraph, the commission adopts §290.109(d)(1) to identify the term "sample" to specify "distribution coliform sample." This distinction is needed to differentiate the invalidation requirements for raw groundwater source samples found in the adopted §290.109(d)(2) from the existing invalidation requirements for distribution coliform samples.

The commission adopts new §290.109(d)(1)(A) - (E) to contain the requirements existing §290.109(c)(4)(A) - (E) that require written notification from laboratories when improper sample analysis occurred in order to document that the improper analysis caused the positive result and give the executive director the discretion to invalidate a sample.

The commission adopts new §290.109(d)(2) to address fecal indicator positive source sample invalidation as allowed by the federal GWR in 40 CFR §141.402(d).

The commission adopts new §290.109(d)(2)(A) to incorporate the public water systems requirements in the event of a laboratory invalidation of a fecal indicator positive source samples as required by 40 CFR §141.402(d).

The commission adopts new §290.109(d)(2)(B) to provide the criteria under which invalidation of a fecal indicator positive source sample will be allowed as contained in the federal GWR in 40 CFR §141.402(d).

The commission adopts §290.109(e) to replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

The commission adopts §290.109(f)(1)(A) to identify the repeat sample referred to as those collected in the distribution system. In addition, the commission uses the term *E. coli* rather than *Escherichia coli* for consistency with the federal GWR in 40 CFR §141.402.

The commission adopts §290.109(f)(1)(B) to identify the repeat and routine sample as those collected in the distribution system. In addition, the commission uses the term *E. coli* rather than *Escherichia coli* for consistency with 40 CFR §141.402.

The commission adopts §290.109(f)(2) to replace the term "bacteriological samples" with the term "routine distribution coliform samples." In addition, the commission uses the term *E. coli* rather than *Escherichia coli* for consistency with 40 CFR §141.402. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission adopts §290.109(f)(3) to identify samples referred to as routine distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction. In addition, the commission uses the term *E. coli* rather than *Escherichia coli* for consistency with 40 CFR §141.402.

The commission adopts a new §290.109(f)(4) to contain the non-detection standards for fecal indicators in raw groundwater sources as established in the GWR treatment technique requirements under 40 CFR §141.403.

The commission renumbers existing §290.109(f)(4) to §290.109(f)(5) and further identifies the coliform samples referred to in this paragraph as distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission adopts new §290.109(f)(6) to specify that failure to collect the required number of raw source samples will result in a monitoring violation as defined under the federal GWR in 40 CFR §141.402(h).

The commission renumbers existing §290.109(f)(5) to §290.109(f)(7) in order to retain the correct numbering sequence after inserting additional paragraphs resulting from the federal GWR.

The commission adopts new §290.109(f)(8) to specify that failure to issue public notice or certify that public notice has been performed will result in a public notice violation consistent with EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission renumbers existing §290.109(f)(6) to §290.109(f)(9) and to identify the routine and repeat samples referred to in this paragraph as distribution coliform samples. The new federal GWR initiates requirements for microbiological contaminants other than coliform bacteria, so it is now necessary to make this distinction.

The commission renumbers existing §290.109(f)(7) to §290.109(f)(10) and to identify the samples referred to in this paragraph as distribution coliform samples. Because the new federal rule requirements initiate requirements for microbiological contaminants other than coliform bacteria, it is now necessary to make this distinction.

The commission renumbers existing §290.109(f)(8) to §290.109(f)(11) in order to retain the correct numbering sequence after inserting additional paragraphs resulting from the federal GWR.

The commission adopts §290.109(g)(1) to further identify the requirements as boil water notice requirements of Subchapter D and correct the incorrect internal reference from §290.46(s)(3) to §290.46(q).

The commission adopts new §290.109(g)(2) to require public notice of fecal indicator positive source samples in accordance with §290.122(a)(1)(F) of this title and the requirements of the federal GWR in 40 CFR §141.202(a)(8). In response to comment, the commission removed the word "valid" and added the phrase "that has not been invalidated." Also in response to comment, the commission specified that the notice must be issued within 24 hours.

Existing §290.110, Disinfectant Residuals, contains the requirements for maintaining disinfectant residuals in drinking water distribution systems and in surface water treatment plants. This section is extensively amended in response to the federal LT2, which adds complexity to the requirements for surface water treatment plants. In order to simplify and clarify the requirements, the existing requirements for surface water treatment plants are moved to §290.111 with requirements from the federal LT2. Section 290.110 is therefore amended to contain only the requirements for disinfectant residuals in drinking water distribution systems. The adopted amendments will also establish an alternate analytical method for chlorine dioxide which will allow public water systems to use this method should they so choose, allowing greater flexibility for the regulated community. Finally, the adopted amendment will specify that failure to issue public notice or certify that public notice has been performed will result in a public notice violation.

In §290.110(b), the commission deletes a reference to treatment technique requirements that apply only to systems treating surface water or groundwater under the direct influence of surface water because all of the conditions for surface water treatment (and treatment of groundwater under the direct influence of surface water) are moved to the new section containing all of the requirements for surface water treatment plants (and plants treating groundwater under the direct influence of surface water) in §290.111, relating to Surface Water Treatment. Throughout Chapter 290, and in the federal SDWA, the requirements for treatment of groundwater under the direct influence of surface water are identical to the requirements for treatment of surface water, except where specific differences are explicitly noted.

The commission adopts the amendment to §290.110(b)(1) which replaces the specific requirement with a general requirement that public water systems ensure that water is adequately disinfected before entering the distribution system. The commission moves the specific treatment technique requirements currently contained in §290.110(b)(1) to §290.111(c).

The commission adopts §290.110(b)(1)(A) to reference the section of the adopted rules that will contain the disinfection (pathogen inactivation) requirements for systems treating surface water or groundwater under the direct influence of surface water. The commission adopts §290.110(b)(1)(B) to reference the adopted section that contains the analogous requirements for systems treating groundwater. The specific requirements currently contained in these two subparagraphs are moved to §290.111(d)(1).

The commission deletes §290.110(b)(5)(A) and (B), which are no longer needed because the effective date of the regulatory change has passed.

The commission moves the requirements contained in existing §290.110(c)(1) to adopted new §290.111(d)(2). The commission moves the requirements contained in existing §290.110(c)(1)(A) - (C) to adopted new §290.111(d)(2)(A) - (C), respectively. The commission renumbers the remaining paragraphs in §290.110(c) accordingly.

The commission moves the analytical requirements currently contained in §290.110(d)(1) and (2) to §290.111(d)(4)(A) and (B), respectively. As a result, the remaining paragraphs in this subsection are renumbered accordingly.

In addition to renumbering §290.110(d)(5) to §290.110(d)(3), the adopted amendment would also allow the use of additional analytical methods for chlorine dioxide described in 40 CFR §141.75. New §290.110(d)(3)(A) contains the method in existing §290.110(d)(5).

The commission adopts §290.110(e) to allow the commission to comply with minimum federal requirements, update and correct references contained in existing provisions, and reduce the reporting requirements for transient, noncommunity systems that only treat groundwater or distribute treated water purchased from another public water system.

The commission adopts §290.110(e)(1) to require public water systems with a chlorine dioxide maximum residual disinfection level (MRDL) violation to notify the executive director within 24 hours instead of by the end of the next business day. This adopted change is needed to assure compliance with the requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2).

The commission adopts §290.110(e)(2) to eliminate a reference to an effective date which has already passed and identify the current reporting forms used by plants treating surface water and groundwater under the direct influence of surface water.

The commission adopts the amendment to §290.110(e)(4) which eliminates a reference to an effective date which has passed and which identifies the form number of the Disinfectant Level Quarterly Operating Report (DLQOR) that must be completed by plants that treat groundwater or distribute treated water purchased from another public water system. The commission also replaces the word "submit" with the word "complete" because the commission is reducing the reporting requirements for transient noncommunity water systems. The commission adopts new §290.110(e)(4)(A) and (B) to retain the existing reporting requirement for community and nontransient noncommunity systems but only require transient noncommunity water systems provide a copy of the DLQOR if one is requested by the execu-

tive director consistent with the applicability of existing 40 CFR §141.130(a)(1).

The commission adopts §290.110(e)(5) to correct the errors in the mailing address of the TCEQ's Water Supply Division for consistency with United States Postal Service standards and to replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

The commission adopts the amendments to the references in §290.110(f)(4) and (5)(B) due to reorganization.

The commission adopts a change to §290.110(f)(5)(C) to correct a grammatical error by changing "an" to "a" when referring to a nonacute MRDL violation for chlorine dioxide.

The commission adopts new §290.110(f)(10) to comply with directives received from the EPA and contained in their publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission adopts §290.110(g)(1) to resolve inconsistencies between state and federal regulations and delete a redundant sentence. The adopted rule requires a water system with an MRDL violation for chlorine dioxide to consult with the executive director within 24 hours rather than notify the executive director by the end of the next business day, consistent with the requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2). The adopted amendment to §290.110(g)(1) will also eliminate redundant verbiage more appropriately contained solely in §290.110(g).

The commission adopts §290.110(g)(2) to update citations that changed as a result of moving the requirement currently in §290.110(b)(1) to §290.111(d)(1)(D).

The commission repeals existing §290.111 and replaces it with a new §290.111 to incorporate new federal rule requirements, to relocate some of the requirements currently contained in §290.110 into this section, and to amend several of the existing provisions.

Existing §290.111, Turbidity, contains the turbidity requirements for surface water treatment plants; turbidity is a surrogate for possible microbial contamination. All of the conditions for surface water treatment (and treatment of groundwater under the direct influence of surface water) are moved to the new section containing all of the requirements for surface water treatment plants (and plants treating groundwater under the direct influence of surface water). Throughout Chapter 290, and in the federal SDWA, the requirements for treatment of groundwater under the direct influence of surface water are identical to the requirements for treatment of surface water, except where specific differences are explicitly noted. The new federal LT2 increases the disinfection requirements for surface water treatment plants, and also ties disinfection requirements to levels of turbidity or microbes in the source water. Therefore, the new §290.111 brings all of these requirements for surface water treatment plants together in one section. The commission also changes the name of §290.111 from "Turbidity" to "Surface Water Treatment" to more accurately reflect what is contained in this section.

The adopted new §290.111 will continue to contain requirements that only apply to plants treating surface water or groundwater that is under the direct influence of surface water. In addition, the new section will incorporate new requirements regarding raw surface water monitoring; move and amend the existing overall treatment technique requirements for viruses, *Giardia lamblia*, and *Cryptosporidium parvum*; relocate and amend the existing disinfection and inactivation requirements for these pathogens; update the existing turbidity requirements for plants using conventional filters; contain new performance requirements for unconventional filters such as cartridge and membrane filters; identify new treatment credits that plants providing enhanced treatment can receive; and relocate and amend the existing requirements related to monitoring and reporting, compliance determinations, and public notification.

The commission adopts new §290.111(a) to identify the types of public water systems that are subject to the requirements of this adopted section. The adopted requirement is currently contained in existing §290.111(a). In new §290.111(a)(1) - (3), the commission adopts implementation schedules for systems treating surface water, groundwater under the direct influence of surface water, or a combination of these sources. The adopted implementation schedules are consistent with the requirements of the federal LT2 in 40 CFR §141.73 and related federal regulations.

The commission adopts new §290.111(b) to incorporate the raw surface water monitoring requirements contained in the federal LT2 in 40 CFR §141.700(c)(1) to require a system treating surface water or groundwater under the direct influence of surface water to conduct two rounds of special monitoring to determine site-specific minimum treatment technique requirements for *Cryptosporidium parvum* and other pathogens. Adopted §290.111(b) would allow the executive director to waive the monitoring requirements for systems that meet the maximum treatment technique requirements imposed by the federal rule, in accordance with the federal LT2 in 40 CFR §141.701(d).

The commission adopts new §290.111(b)(1) to establish the mechanism that the commission adopts to use to ensure that raw surface water monitoring plans comply with the requirements of the federal LT2 in 40 CFR §141.701 and §141.702(a).

The commission adopts new §290.111(b)(2) to incorporate the raw water sampling location requirements of the federal LT2 in 40 CFR §141.703.

The commission adopts new §290.111(b)(3) to address several requirements contained within LT2. The adopted new §290.111(b)(3)(A) - (C) incorporates the requirements of 40 CFR §141.700(b)(1) and §141.701(a)(1). The commission adopts new §290.111(b)(3)(A)(i) and (ii) to provide the population or combined distribution system basis for scheduling raw surface water *Cryptosporidium* sampling consistent with the federal LT2 in 40 CFR §141.700(b)(1). The commission adopts new §290.111(b)(3)(B) to address the requirements of 40 CFR §141.701(a)(3) and (a)(4). Adopted new §290.111(b)(3)(B)(i) - (iii) contains the LT2 basis for *Cryptosporidium* sampling at small systems with elevated *E. coli* levels. In response to comment, the commission changed the language of §290.111(b)(3)(B)(i) and (ii) to add a provision that would allow a system using a GUI source nearest to a river or flowing stream to only have to conduct *Cryptosporidium* sampling if the *E. coli* levels found exceed the levels for a source water intake on a river or flowing stream. This change allows systems using GUI sources all the options available in 40 CFR §141.701(a)(4)(iv). In response to comment, the commission removed the requirement for turbidity monitoring in §290.111(b)(3)(B) and turbidity and *E. coli* monitoring in §290.111(b)(3)(B)(iii) to assure that the commissions rules are no more stringent than the federal rules. The adopted §290.111(b)(3)(C) gives the executive director the latitude needed to implement 40 CFR §141.701(e).

The commission adopts new §290.111(b)(4) to address the raw water sample scheduling requirements of the federal LT2 in 40 CFR §141.701(c) and (f) and §141.702(b) and (b)(1). In response to comment, the commission adopts new Figure: 30 TAC §290.111(b)(4)(A) to contain the sampling schedules prescribed by 40 CFR §141.701(c) and new §290.111(b)(4)(A) to address the sampling schedule for new sources using the process prescribed in 40 CFR §141.701(c). As a result of these additions, the commission has renumbered the remaining paragraphs in new §290.111(b)(4). New §290.111(b)(4)(C) contains the requirement that samples be collected within two days before or after the date approved by the executive director and new §290.111(b)(4)(D) contains the requirement that if a system fails to collect the sample within that period, they must explain why in writing.

The commission adopts new §290.111(b)(5) to consolidate and define an implementation approach for meeting the requirements of the federal LT2 in 40 CFR §141.702(b)(2) and (c).

The commission adopts new §290.111(b)(6) to incorporate the analytical requirements of the federal LT2 in 40 CFR §141.704 and §141.705. The commission adopts new §290.111(b)(6)(A) and (B) to contain the analytical requirements for raw water *Cryptosporidium* and *E. coli*, respectively. The commission adopts new §290.111(b)(6)(B)(i) - (iii) to contain details for approved sample collection requirements of the federal LT2 in 40 CFR §141.705. The commission adopts new §290.111(b)(6)(C) to contain the analytical requirement that turbidity be analyzed at a laboratory approved by the executive director.

The commission adopts new §290.111(b)(7) to address the reporting requirements of 40 CFR §141.706 and to facilitate implementation of the regulatory approach of adopted new §290.111(b)(5). Adopted §290.111(b)(7)(A) requires systems to use the commission form 20358 for reporting raw surface sample results. Adopted new §290.111(b)(7)(A)(i) requires systems to explain in writing if they miss a required sample period. Adopted new §290.111(b)(7)(A)(ii) requires that if the lab could not obtain a valid analytical result from the sample, that the system submit a request to collect a replacement sample to the executive director, consistent with the federal LT2 requirements of 40 CFR §141.706. The commission adopts new §290.111(b)(7)(B) to contain the reporting deadline, consistent with 40 CFR §141.706, and subsection (b)(7)(C), to contain the mailing address for reports consistent with existing §290.111(e)(7).

The commission adopts new §290.111(c) to implement the requirements of the federal LT2 in 40 CFR §§141.170(a) and (a)(1), 141.500(a)(1), 141.700(c)(3) and (5), 141.710, 141.711, and 141.713.

The commission adopts new §290.111(c)(1) and (2) to contain the *Giardia lamblia* and viral treatment technique requirements in existing §290.111(b)(1).

The commission adopts new §290.111(c)(3) to incorporate the treatment technique requirements for *Cryptosporidium parvum*. Adopted new §290.111(c)(3)(A) - (C) will incorporate new requirements imposed by various paragraphs in 40 CFR §§141.710, 141.711, and 141.713. The word "*Cryptosporidium*" was spelled incorrectly in §290.111(c)(3)(A). The commission has corrected the spelling. The commission adopts Figure: 30 TAC §290.111(c)(3)(B), Treatment Technique Requirements for *Cryptosporidium*, to present the information in a clear and organized manner. The commission made a non-substantive revision to the statutory citation in the preceding sentence by changing the lower case "b" to an upper case "B." In response to comment, the commission also adopts §290.111(c)(3)(A)(i) - (v), to explicitly address the compliance calculation methods contained in 40 CFR §141.710(b), and §290.111(c)(3)(B)(i) - (iii), to address the specific compliance schedule requirements of 40 CFR §141.713(a) and 40 CFR §141.713(c) and the analogous requirements for new raw surface water sources. In response to comment, the commission amends Figure: 30 TAC §290.111(c)(3)(B) for the following minimum treatment technique requirements: Bin 1 from 22.0-log to 2.0-log; Bin 2 from 44.0-log to 4.0-log; Bin 3 from 55.0-log to 5.0-log; and, Bin 4 from 55.5-log to 5.5-log, as was originally intended by the commission. In response to comment, the commission amends Figure: 30 TAC §290.111(c)(3)(B) to replace the heading "Minimum Treatment Technique Requirement" with the heading "Minimum Removal/Inactivation Requirement" and included in the footnote an explicit statement of the *Cryptosporidium* removal credits that will be assigned to various treatment technologies. In response to comment, the commission adopts new Figure: 30 TAC §290.111(c)(3)(B)(i) to explain the compliance timetable for meeting the new treatment technique requirement and address the requirements of 40 CFR §141.713(a) and (c) and the analogous requirements for new raw surface water sources. The commission adopts new §290.111(c)(3)(D) will contain the *Cryptosporidium parvum* requirement currently in §290.111(b)(1).

The commission adopts §290.111(c)(4) to incorporate a *Cryptosporidium* treatment technique requirement for sources that receive a raw surface water source monitoring waiver under adopted §290.111(b).

The commission adopts new §290.111(c)(5) to contain treatment technique requirements moved from existing §290.110(b)(1) and §290.111(b)(1).

The commission adopts new §290.111(c)(6) to authorize the executive director to establish requirements for watershed control and treatment processes that are used to meet LT2 treatment technique requirements for waterborne pathogens. This adoption provides the executive director with the means to comply with the special primacy requirements of 40 CFR §142.16(n) and to ensure that a water system meets the applicable requirements of the federal LT2 in 40 CFR §141.721(f).

The commission adopts new §290.111(d)(1) to move the requirements currently in various parts of existing §290.110, to provide some additional treatment options from LT2, and to incorporate provisions of the federal rule. Specifically, the commission adopts new §290.111(d)(1)(A) and (B) to contain the requirements of existing §290.110(b)(1) and existing §290.111(b)(1). The commission adopts Figure: 30 TAC §290.111(d)(1), Microbial Inactivation Requirements, to present the information in a clear and organized manner.

The commission adopts new §290.111(d)(1)(C) to allow the executive to director to reduce the inactivation requirements for plants that are assigned to Bin 1 that are meeting enhanced performance standards at the effluent of each individual filter. The term "Bin" refers to the required level of microbial removal and inactivation at a surface water treatment plant (or plant treating groundwater under the direct influence of surface water). There are four possible Bin classifications: Bin 1, Bin 2, Bin 3, and Bin 4. The higher the Bin number, the higher the level of treatment that must be provided. The commission limits this additional removal credit to plants assigned to Bin 1 because plants assigned

to Bins 2 - 4 have a higher source water pathogen concentration and it would therefore be inappropriate for such plants to reduce the level of protection provided by the disinfection process.

The commission adopts new §290.111(d)(1)(D) to incorporate the existing §290.110(f)(4) that a system which fails to meet the inactivation requirements for a four-hour period commits a treatment technique violation.

The commission adopts new §290.111(d)(1)(E) to incorporate the requirements of the federal LT2 in 40 CFR §141.720(d)(3)(ii). Due to a publication error, the word "inactivation" was misspelled in the proposal. The word has been correctly spelled and the rule is adopted with this change.

The commission adopts new §290.111(d)(2) to contain the requirements for in-plant monitoring related to the effectiveness of disinfection moved from existing §290.110(c)(1).

The commission adopts new §290.111(d)(2)(A) to contain the requirements for monitoring pH, temperature, and flow moved from §290.110(c)(1)(A).

The commission adopts new §290.111(d)(2)(B) to contain the requirements for determining contact time moved from §290.110(c)(1)(B).

The commission adopts new §290.111(d)(2)(C) to contain the requirements for retesting when inactivation fails to meet the inactivation requirements moved from §290.110(c)(1)(C).

The commission adopts new §290.111(d)(3) to contain monitoring requirements imposed by the federal LT2 in 40 CFR §141.720(d)(3) for systems using UV to meet the inactivation requirements of this adopted subsection.

The commission adopts new §290.111(d)(3)(A) to contain the requirement for monitoring UV intensity, lamp status and flow imposed by the federal LT2 in 40 CFR §141.720(d)(3).

The commission adopts new §290.111(d)(3)(B) to contain the requirements for plants in Bins 2, 3, or 4 to also monitor the volume of water treated in accordance with the federal LT2 in 40 CFR §141.720(d)(3).

The commission adopts new §290.111(d)(4) to relocate or copy many of the requirements currently contained §290.110(d), to allow the use of a new analytical method for chlorine dioxide, and to identify the approved method for measuring ozone concentrations.

The adopted new §290.111(d)(4)(A) and (B) contain the requirements for pH analysis and temperature measurement consistent with existing §290.110(d)(1) and (2), respectively.

The commission adopts new §290.111(d)(4)(C) to contain the requirements for in-plant free chlorine monitoring moved from existing §290.110(d)(3), except that the reference to color comparator methods has been intentionally omitted. The comparator methods are less precise and yield more subjective results. Consequently, they should not be used to quantify the level of inactivation achieved by the disinfection process.

The commission adopts new §290.111(d)(4)(C)(i) - (iv) to contain the requirements for amperometric, DPD Ferrous, DPD photometric, and springaldizine methods to measure free chlorine moved from existing §290.110(d)(3)(A), (B), (C)(i), and (D), respectively.

The commission adopts new §290.111(d)(4)(D) to contain the requirements for in-plant chloramine monitoring moved from existing §290.110(d)(3), except that the reference to color comparators methods has been intentionally omitted. Color comparators accuracy is inadequate to quantify the level of inactivation achieved by the disinfection process.

The commission adopts new §290.111(d)(4)(D)(i) - (iii) to contain the requirements for in-plant chloramine monitoring moved from existing §290.110(d)(4)(A), (B), and (C)(i), respectively.

The commission adopts new §290.111(d)(4)(E) to contain the requirements for in-plant chlorine dioxide monitoring of existing §290.110(d)(5).

The commission adopts new §290.111(d)(4)(E)(i) to contain the amperometric method currently approved in the existing §290.110(d)(5)(A) and adopts §290.111(d)(4)(E)(ii) to contain a reference to the new Lissamine Green method also adopted in new §290.110(d)(3)(B).

The commission adopts new §290.111(d)(4)(F) to reference the EPA-approved Indigo Method for measuring ozone residuals.

The commission adopts new §290.111(d)(4)(G) to contain the analytical requirements for UV of the federal LT2 in 40 CFR §141.720(d)(3)(i).

The commission adopts new §290.111(e) to contain the treatment technique requirements for turbidity currently contained in §290.111(b). Adopted new §290.111(e) addresses all of the treatment techniques, performance criteria, monitoring requirements, special investigation requirements, and analytical methods related to turbidity monitoring at plants using conventional filters. These requirements are currently contained in §290.111(b) - (d) and are reorganized and updated to remove references to the implementation timelines for provisions that have already become effective.

The commission adopts new §290.111(e)(1) to contain the combined filter effluent (CFE) turbidity standards of existing §290.111(b)(1). The commission adopts new §290.111(e)(1)(A) to contain the existing requirement of §290.111(b)(1)(A) and adopts new §290.111(e)(1)(B) to contain the existing requirement of §290.111(b)(1)(B). The provisions of existing §290.111(b)(1)(C) are not transferred because the effective date of this provision has passed.

The commission adopts new §290.111(e)(2) to contain the individual filter effluent turbidity (IFE) standards that currently exist in §290.111(b)(2). The commission adopts new §290.111(e)(2)(A) to contain the requirements currently contained in §290.111(b)(2)(B) and (C). The commission merges the requirements currently contained in §290.111(b)(2)(B) and (C) and move them to adopted §290.111(e)(2)(A) since the effective date for small systems has passed. The commission adopts new §290.111(e)(2)(B) to contain the requirements of existing §290.111(b)(2)(A).

The commission adopts new §290.111(e)(3) to contain the routine turbidity monitoring requirements currently contained in §290.111(c). The adopted new §290.111(e)(3)(A) contains the CFE requirements of existing §290.111(c)(1)(A) and the adopted new §290.111(e)(3)(B) contains the CFE requirements of existing §290.111(c)(2)(A).

Adopted new §290.111(e)(3)(C) contains the IFE monitoring requirements currently contained in existing §290.111(c)(3) and (4)(A).

The commission adopts new §290.111(e)(3)(D) to relocate the CFE and IFE monitoring requirements for plants that continu-

ously monitor CFE in lieu of IFE from existing §290.111(c)(1)(B), (2)(B), and (4)(B) to adopted new §290.111(e)(3)(D).

The commission adopts new §290.111(e)(3)(D)(i) to contain the requirements for CFE monitoring from existing §290.111(c)(1)(B).

The commission adopts new §290.111(e)(3)(D)(ii) to contain the requirements for IFE monitoring from existing §290.111(c)(1)(C).

The commission deletes the provisions equivalent to those currently contained in §290.111(c)(1)(C), (2)(C), or (4)(C) because the effective dates of these existing provisions have passed.

The commission adopts new §290.111(e)(4) to contain the special monitoring requirements currently contained in §290.111(c)(5) - (7).

The commission adopts new §290.111(e)(4)(A) to contain the special monitoring requirements of existing §290.111(c)(5) and (6), merging the requirements for large and small plants, since all plants are subject to the same requirements now.

The commission adopts new §290.111(e)(4)(A)(i) to contain the filter profile requirements of existing §290.111(c)(5)(A) and (6)(A).

The commission adopts new §290.111(e)(4)(A)(ii) to contain the filter assessment requirements of existing §290.111(c)(5)(B) and (6)(B).

The commission adopts new §290.111(e)(4)(A)(iii) to contain the comprehensive performance evaluation requirements of existing §290.111(c)(5)(C) and (6)(C).

Similarly, the commission adopts new §290.111(e)(4)(B) to contain the special monitoring requirements for systems monitoring CFE in lieu of IFE currently contained in §290.111(c)(7).

The commission adopts new §290.111(e)(4)(B)(i) to contain the filter profile requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(A).

The commission adopts new §290.111(e)(4)(B)(ii) to contain the filter assessment requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(B).

The commission adopts new §290.111(e)(4)(B)(iii) to contain the comprehensive performance evaluation requirements for systems monitoring CFE in lieu of IFE of existing §290.111(c)(7)(C).

The commission adopts new §290.111(e)(5) to contain the analytical requirements currently contained in §290.111(d) and reference a new turbidity method recently approved by the EPA.

The commission adopts new §290.111(e)(5)(A)(i) and (ii) to relocate the provisions currently contained in §290.111(d)(1). The commission adopts new §290.111(e)(5)(A)(iii) to reference the Hach FilterTrak Method 10133 contained in the federal LT2 in 40 CFR §141.74(a)(2).

The commission adopts new §290.111(e)(5)(B) to contain the requirements of existing §290.111(d)(2) regarding continuous or grab sampling for turbidity.

The commission adopts new §290.111(e)(5)(C) to contain the requirements for continuous turbidity monitoring in existing §290.111(d).

The commission adopts new §290.111(e)(5)(C)(i) to contain the SCADA requirements for continuous turbidity monitoring in existing §290.111(d)(3)(A).

The commission adopts new §290.111(e)(5)(C)(ii) to contain the SCADA requirements for grab sampling at large systems when there is a failure of continuous turbidity monitoring in existing §290.111(d)(3)(B).

The commission adopts new §290.111(e)(5)(C)(iii) to contain the requirements of existing §290.111(d)(5)(B) for grab sampling when there is a failure of continuous turbidity monitoring at small systems.

The commission adopts new §290.111(e)(5)(D) to relocate the instrumentation requirements currently contained in §290.111(d)(6). The commission did not replace the expired provision contained in the §290.111(d)(7), which is repealed.

The commission adopts new §290.111(f) to incorporate the requirements of current §290.111(b)(1)(B) and establish minimum filtration requirements consistent with those contained in the federal LT2 in 40 CFR §141.719.

The commission adopts new §290.111(f)(1) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set treatment technique requirements for unconventional filtration technologies.

The commission adopts new §290.111(f)(1)(A) to incorporate the requirements currently contained in §290.111(b)(1)(B) and adopts new §290.111(f)(1)(B) to incorporate the requirements of 40 CFR §141.73(d) that require the state to set operating requirements for unconventional filtration technologies if microbial treatment credit is awarded.

The commission adopts new §290.111(f)(2), (2)(A) and (B) to incorporate the combined filter effluent monitoring requirements for cartridge and membrane filters of 40 CFR §141.700(a) and provide consistency with existing §290.111(c)(1).

The commission adopts new §290.111(f)(2)(C) to incorporate the provisions of 40 CFR §141.719(b)(4)(i) and (ii) which require membrane filters be monitored continuously and readings recorded.

The commission adopts new §290.111(f)(2)(D) to incorporate the provisions of 40 CFR §141.719(b)(3) and (3)(i) that require systems using membrane filters to conduct direct integrity testing.

The commission adopts new §290.111(f)(2)(D)(i) to incorporate the requirements of 40 CFR §141.719(b)(3)(ii) and (iii) that systems using membrane filters conduct direct integrity testing with sufficient sensitivity.

The commission adopts new §290.111(f)(2)(D)(ii) to incorporate the requirements of 40 CFR §141.719(b)(3)(iv) that systems using membrane filters conduct direct integrity testing that allows them to assure the membrane unit meets the removal credit approved by the executive director.

The commission adopts new §290.111(f)(2)(D)(iii) to incorporate the ability of the state described in 40 CFR §141.719(b)(3)(vi) and §141.73(d) to approve less frequent direct integrity testing.

The commission adopts new §290.111(f)(2)(D)(iv) to incorporate the requirements of 40 CFR §141.719(b)(3)(vi) regarding the frequency of direct integrity testing and the ability of the state to approve less frequent direct integrity testing to these same systems.

The commission adopts new §290.111(f)(2)(D)(v) to incorporate the requirements of 40 CFR §141.719(b)(4)(iv) and (v) that systems using membrane filters conduct direct integrity testing if indirect integrity testing shows possible system failure.

The commission adopts new §290.111(f)(2)(D)(vi) to incorporate the requirements of 40 CFR §141.719(b)(3)(v) that systems using membrane filters which fail direct integrity testing must remove the membrane unit from service until it is fixed.

The commission adopts new §290.111(f)(2)(E) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set monitoring requirements for unconventional filtration technologies if microbial treatment credit is awarded.

The commission adopts new §290.111(f)(3) to consistently apply the analytical requirements in adopted §290.111(e)(5) to turbidity measurements.

The commission adopts new §290.111(f)(3)(A) which references the adopted new §290.111(e)(5)(A) in order to maintain consistency in the methods used to measure CFE turbidity levels regardless of the type of filtration technology used at the plant.

The commission adopts new §290.111(f)(3)(B) to incorporate provisions consistent with the requirements of the federal LT2 in 40 CFR §141.719(b)(4)(i). Although the adopted rule continues to allow the executive director to approve other methods of monitoring water quality, the adoption also continues to require the EPA-approved Hach FilterTrak Method 10133 at plants that choose to monitor the turbidity level of the water produced by individual filter units.

The commission adopts new §290.111(f)(3)(C) to incorporate the requirements of 40 CFR §141.73(d) that requires the state to set analytical requirements for unconventional filtration technologies.

The commission adopts new §290.111(f)(3)(D) to extend the data collection requirements adopted in new §290.111(e)(5)(C) to unconventional filtration technologies.

The commission adopts new §290.111(f)(3)(E) to consistently apply the monitoring requirements in adopted §290.111(e)(5)(C)(ii) to cartridge filters.

The commission adopts new §290.111(g) to implement various provisions of the LT2 which identify several approaches that treatment plants can use to achieve enhanced pathogen control and allow the state to establish design, operational, monitoring, and reporting requirements for these approaches.

The commission adopts new §290.111(g)(1) to incorporate the provisions of the federal LT2 in 40 CFR §141.718(b). The adopted rules will allow the executive director to approve a 1.0-log *Cryptosporidium* removal credit for plants that meet enhanced IFE performance criteria or approve a 0.5-log *Cryptosporidium* removal credit to plants that meet enhanced CFE, but not enhanced IFE, performance criteria. The commission's adoption is consistent with the LT2 requirement that plants meeting both enhanced IFE and CFE performance criteria receive credit for providing a maximum of 1.0-log *Cryptosporidium* credit.

The commission adopts new §290.111(g)(1)(A) to incorporate the requirement of the federal LT2 in 40 CFR §141.718(b) that plants have the ability to receive additional 1.0-log microbiological treatment credit for media filters if specified conditions are met on each filter.

The commission adopts new §290.111(g)(1)(A)(i) - (iii) to incorporate the requirement of 40 CFR §141.718(b) that plants receive an additional microbiological treatment credit if the filtered water turbidity of each filter is continuously monitored and recorded every 15 minutes and the filtered water turbidity of each filter is less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month, and if no individual filter produces water above 0.3 NTU in two consecutive readings.

The commission adopts new §290.111(g)(1)(B), (B)(i) and (ii) to address the requirements of 40 CFR §141.718(b)(3) that the executive director has the ability to approve additional treatment credits if the plant does not meet §290.111(g)(1)(A) and if the executive director determines that the failure was caused by unusual and short term events that could not be prevented by plant design, operation or maintenance and if this is only the first or second such failure within the last twelve months.

The commission adopts new §290.111(g)(2) to incorporate the requirement of the federal LT2 in 40 CFR §141.718(a) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for media filters if three conditions are met. Specifically, the commission adopts new §290.111(g)(2)(A) - (C) to incorporate the requirements of 40 CFR §141.718(a) and (b) that plants receive additional microbiological treatment credit if the filtered water turbidity of each filter is continuously monitored and recorded every 15 minutes, and the combined filter effluent turbidity is less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month. As the third condition, the commission adopts new §290.111(g)(2)(C) to incorporate the implicit requirements of 40 CFR §141.718(a) and (b) to ensure that a treatment plant does not receive a total of more than 1.0 log of additional credit allowed by federal rule for plants meeting enhanced performance standards for both IFE and CFE turbidity levels in the same month.

The commission adopts new §290.111(g)(3) to incorporate the requirement of the federal LT2 in 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if four conditions are met. As the first of these four conditions, the commission adopts new §290.111(g)(3)(A) to incorporate the requirement of 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the filters meet existing state filter design criteria. As the second of these four conditions, the commission adopts new §290.111(g)(3)(B) to incorporate the requirement of 40 CFR §141.719(c) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if all of the plant flow passes through both stages of filters. As the third and fourth of these four conditions, the commission adopts new §290.111(g)(3)(C) and (D) to incorporate the requirement of 40 CFR §141.719(c) to establish that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the individual filter turbidity of the first stage of filters is monitored and recorded every 15 minutes. To receive the additional credit for the second stage of filtration, the first stage of filters must also meet the existing minimum requirements to achieve the existing treatment credit.

The commission adopts new §290.111(g)(3)(D) to incorporate the requirements of 40 CFR §141.719(c) and existing §290.111(e)(1)(A) that plants have the ability to receive an additional 0.5-log microbiological treatment credit for a second set of filters if the individual filter turbidity of the first stage of filters is below 1.0 NTU. To receive the additional credit for the second stage of filtration, the first stage of filters must meet the existing minimum requirements to achieve the existing treatment credit.

The commission adopts new §290.111(g)(4) to incorporate the requirement of 40 CFR §141.718(c) that plants have the ability

to receive an additional microbiological treatment credit for other treatment strategies if approved by the executive director.

The commission adopts new §290.111(g)(4)(A) to incorporate the requirement of 40 CFR §141.718(c) that plants have the ability to receive an additional microbiological treatment credit for other treatment strategies if the other strategies achieve a quantifiable reduction in the risk of waterborne disease and treats all the water produced by the plant.

The commission adopts new §290.111(g)(4)(B) to incorporate the requirement of 40 CFR §141.718(c) and 40 CFR §141.715(a)(1) that plants have the ability to receive an additional microbiological treatment credit for other treatment strategies if the other strategies conform to applicable requirements found in 40 CFR §§141.715 - 141.720.

The commission adopts new §290.111(g)(4)(C) to incorporate the requirement of 40 CFR §141.718(c)(3) that the executive director have the ability to establish minimum site-specific requirements for alternative treatment strategies.

The commission adopts new §290.111(g)(4)(D) to incorporate the requirement of 40 CFR §141.718(c)(1) that the executive director cannot approve additional treatment credits for alternative treatment strategies if the treatment process already has treatment credits in this subsection.

The commission adopts new §290.111(h) to move the provisions currently contained in §290.111(e) and to incorporate the reporting requirements associated with the new federal rules.

The commission adopts new §290.111(h)(1) in order to relocate the requirement currently in §290.111(e)(1). The adopted change also results in an amendment which reduces the time that a public water system has to consult with the executive director following a CFE reading over 1.0 NTU. This amendment is necessitated by requirements of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2).

The adopted new §290.111(h)(2) contains a version of the requirement in existing §290.111(e)(2). The adopted amendment more accurately describes the types of systems that must submit a Surface Water Monthly Operating Report.

Similarly, the adopted new §290.111(h)(3) contains an amended version of the requirement in existing §290.111(e)(3) which updates the description of, and form number for, the report used by plants that continuously monitor CFE turbidity in lieu of IFE turbidity.

The adopted new §290.111(h)(4) - (6) contain amended versions of the requirements in existing §290.111(e)(4) - (6). In this case, the amendments reflect the locations of the applicable provisions in the new §290.111(e)(4).

The adopted new §290.111(h)(7) and (8) contain the reporting requirements for plants using membrane and UV facilities, respectively, and address the requirements of the federal LT2 in 40 CFR §171.721(f)(10) and (15), respectively.

The adopted new §290.111(h)(9) requires systems using other technologies to meet the treatment technique requirements of state and federal rules to submit other reports that the executive director needs to determine if the plant is meeting minimum standards. This adopted provision is consistent with the LT2 requirements contained in 40 CFR §171.721(f), (f)(8) and (9), and 40 CFR §171.718(c)(3).

In response to comment, the commission added new §290.111(h)(10) to explicitly state that systems must submit their *Cryptosporidium* bin classification to the state as required in 40 CFR §141.721(c). As a result of these additions, the commission has renumbered the remaining paragraph to §290.111(h)(11).

The adopted new §290.111(h)(11) contains an amended version of the requirement in existing §290.111(e)(7) which is amended to use the correct name of the TCEQ and the correct syntax protocol for the mailing address.

The commission adopts new §290.111(i)(1) to address all of the monitoring violations that could occur under adopted §290.111. The adopted new §290.111(i)(1) covers the requirements in existing §290.110(c)(1) and §290.111(f)(1) and addresses various monitoring requirements contained throughout 40 CFR Part 141, Subpart Q - Enhanced Treatment for *Cryptosporidium*.

The adopted new §290.111(i)(2) relocates the reporting violations in existing §290.110(c)(2) and §290.111(f)(2) and (3) and addresses various reporting requirements contained throughout 40 CFR Part 141, Subpart Q - Enhanced Treatment for *Cryptosporidium*.

The commission adopts new §290.111(i)(3) which will replace the analogous existing rule, §290.111(f)(4), which is being repealed.

The commission adopts new §290.111(i)(4) to establish the criteria for an acute treatment technique violation for plants using membrane technology and in response to the federal LT2 requirements in 40 CFR §141.173(b) and 40 CFR §141.551(a)(2).

The adopted new §290.111(i)(5) relocates the provisions in existing §290.110(b)(1), replaces the current version of §290.111(f)(5) which the commission repeals, and allows the executive director to implement the requirements of the federal LT2 in 40 CFR §141.711(a).

In response to comment, the commission adopts new §290.111(i)(6) which contains the treatment technique violation criteria for systems that fail to request a Bin Classification and allows the executive director to implement the requirements of the federal LT2 in 40 CFR §141.710(f).

Based on the addition of new §290.111(i)(6) in response to comment, the commission renumbers proposed §290.111(i)(6) to §290.111(i)(7). The commission adopts new §290.111(i)(7) to contain an existing violation criteria in §290.111(f)(6).

Based on the addition of new §290.111(i)(6) in response to comment, the commission renumbers proposed §290.111(i)(7) to §290.111(i)(8). The commission adopts new §290.111(i)(8) to comply with directives received from the EPA and contained in their publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission relocates the public notice requirements in existing §290.111(g) to adopted new §290.111(j).

The commission adopts new §290.111(j)(1) to relocate and amend the public notification requirements in existing §290.111(g)(1). This would address the adopted acute treatment technique requirements for plants using membrane technology and assure that systems notify their customers in accordance with the timelines established in the federal LT2 in 40 CFR §141.202(b)(2).

The adopted new §290.111(j)(2) contains an amended version of the rule currently contained in §290.111(g)(2). This would allow the commission to address the provisions of the federal PNR in 40 CFR §141.202(a)(5) and (b)(2), incorporating the correct 24-hour reporting requirement, to replace the incorrect reference to reporting occurring by the end of the next business day.

The adopted new §290.111(j)(2)(A) addresses the requirement in the federal PNR in 40 CFR §141.202(b)(2) for the executive director to determine the level of customer notification required after the occurrence of a combined filter turbidity exceedance of 1.0 NTU based on the results of the consultation with the water system.

The commission adopts new §290.111(j)(2)(B) to incorporate 40 CFR §141.202(b)(2) requiring a system to notify its customers in accordance with the requirements of §290.122(a) if they fail to consult with the executive director after the occurrence of a combined filter turbidity exceedance of 1.0 NTU.

The commission adopts new §290.111(j)(3) to address the public notification requirements in existing §290.110(b)(1) and §290.111(f)(5) and treatment technique requirements described in §290.111(c), (d)(1), (e)(1) and (f)(1).

Section 290.112, Total Organic Carbon (TOC), contains requirements related to the removal of naturally occurring organic material (total organic carbon) in source water that may form potentially harmful disinfection by-products.

The commission adopts §290.112 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

Section 290.112(b)(1) is amended by writing out the first use of the terms "total organic carbon" and "milligrams per liter" before using their acronyms, in accordance with agency syntax protocols. Section 290.112(b)(2)(C) is amended by writing out the first use of the terms "calcium carbonate," "total trihalomethanes," and "haloacetic acid-group of five" prior to using their acronyms. Section 290.112(b)(2)(E) is amended by writing out the first use of the terms "specific ultraviolet absorbance" and "liters per milligram-meter" prior to using their acronyms.

In response to comment, the commission defined "monthly" as "every 30 days" in §290.112(c)(2).

In response to comment, the commission defined "per plant per quarter" as "every 90 days" in §290.112(c)(2)(A) and (B).

In response to comment, the commission added §290.112(c)(2)(C) to contain the reduced TOC monitoring criteria for systems with low TOC, TTHM, and HAA5 levels.

In §290.112(e)(1) is amended by updating the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service syntax protocols. The TCEQ form number for the Monthly Operational Report for Total Organic Carbon is added to §290.112(e)(2). The references to large system and small system effective reporting dates in 2001 and 2003 are deleted from §290.112(e)(2)(A) and (B), respectively. References to disinfection by-products requirements in §290.112(e)(3)(A) are updated to refer to §290.113 and §290.115 containing existing Stage 1 and adopted DBP2 requirements. Section 290.112(e)(3)(B) is amended by deleting the description of the internal reference to §290.113 because that description appears earlier in the text of this section.

Section 290.112(f)(4) is added to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

Existing §290.113, Disinfection By-products (TTHM and HAA5), contains the standards for disinfection by-products resulting from the Stage 1 Disinfection Byproducts Rule promulgated by the EPA in December 1998.

The commission adopts the amendment to the title of §290.113 which adds the term "Stage 1" because this section includes the requirements of the federal Stage 1 Disinfection Byproducts Rule. This adopted amendment provides differentiation from 30 TAC §290.115 which is added to include the provisions of the federal DBP2. The term "Stage 2" is added to reference the provisions of the new rule.

The commission adopts §290.113(a)(1) to include the schedule in Figure: 30 TAC §290.113(a)(1), Date to Start Stage 2 Compliance, upon which public water systems may cease to comply with the provisions of the Stage 1 Disinfection Byproducts Rule and must start to comply with the provisions of DBP2, as contained in 40 CFR §141.620(c)(1) - (5). The commission amends §290.113(a)(2) to ensure that the monitoring dates are clear. The commission deletes the existing language of §290.113(a)(1) - (4) which reference effective dates that are in the past.

The commission adopts new §290.113(a)(2) to specify the dates upon which compliance with the Stage 1 requirements of this section will cease.

The commission adopts the amendment to Figure: 30 TAC §290.113(c)(3) which adds "Stage 1" to the title of the figure so that the new title is "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5." This adopted amendment provides differentiation from 30 TAC §290.115 which is added to include the provisions of the federal DBP2.

The commission adopts the amendment to Figure: 30 TAC §290.113(c)(4) which adds "Stage 1" to the title of the figure so that the new title is "Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5." This adopted amendment provides differentiation from 30 TAC §290.115 which is added to include the provisions of the federal DBP2. In response to comment, the commission to add a footnote to the table in Figure: 30 TAC §290.113(c)(4) to include the reduced TTHM and HAA5 monitoring criteria when a system has relatively low levels of TTHM, HAA5, and TOC to be consistent with the federal language in 40 CFR §141.132(b)(1)(iii).

The commission adopts §290.113(e) to replace the outdated name of the agency with the current name and to format the agency's address consistent with United States Postal Service standards.

Section 290.114, Other Disinfection By-products (Chlorite and Bromate) contains the health-based standards, sampling requirements, reporting requirements, and public notification requirements for disinfection by-products other than trihalomethanes and haloacetic acids. It includes standards for chlorite, which is a by-product of disinfecting water using chlorine dioxide, and standards for bromate, which is a by-product of disinfecting water using ozone.

The commission adopts §290.114 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

In §290.114(a)(1) the first use of the term "milligrams per liter" is written out prior to use of its abbreviation. Section 290.114(a)(2)(B)(iv) and (v) is deleted to eliminate references to compliance deadlines that have passed. References to past deadlines are removed from §290.114(a)(3). Specifically, the commission deletes §290.114(a)(3)(B) which contains a compliance date that has passed, and renumbers §290.114(a)(3)(C). The internal reference to reporting analytical results in existing §290.114(a)(4)(B) is corrected to conform with agency syntax protocols. In §290.114(a)(4)(C) it is adopted to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service standards. New §290.114(a)(5)(D) is adopted to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with the PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule.

The commission adopts §290.114(b)(3) to delete the description of the contents of §290.119 because that subsection is previously referenced in this section. In addition, the reference in §290.114(b)(3) to use of certified labs is amended to reflect that authority for certification of drinking water laboratories under the Safe Drinking Water Act has passed from the (then) Texas Department of Health to the TCEQ. The commission adopts §290.114(b)(4) to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" in the mailing address, consistent with United States Postal Service standards. New §290.114 (b)(5)(D) is adopted to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification (PN) Rule. The commission amends §290.114(b)(6)(A) by deleting the description of the contents of §290.122(b) to conform to the syntax standards.

The commission adopts new §290.115, Stage 2 Disinfection By-products (TTHM and HAA5), to contain the requirements of DBP2. EPA promulgated DBP2 as part of their congressional mandate to promulgate rules to reduce the risk to public health from potentially carcinogenic disinfection by-products, specifically trihalomethanes and haloacetic acids. Trihalomethanes and haloacetic acids increase the longer the water resides in distribution system pipes. The Stage 1 Disinfection By-products Rule based compliance on a running annual average of samples collected at all locations in the distribution system, which means that public water system customers living in more remote areas of a distribution system currently experience much greater risk than customers living near the plant. DBP2 reduces this inequity by requiring systems to identify locations in the system with elevated trihalomethane and haloacetic acid levels and changing the compliance determination method to base compliance on locational running annual averages. The federal DBP2 is significantly different than the existing Stage 1 requirements, so a new section is adopted.

The commission adopts new §290.115(a) to contain the existing requirements of §290.113(a), consistent with the applicability requirements of the new federal DBP2 requirements. New §290.115(a)(1) is adopted to reference the start dates for early monitoring requirements contained in adopted §290.115(c). New §290.115(a)(2) is adopted to specify the dates upon which compliance with all of the requirements of DBP2 will start, and the requirements of the Stage 1 Disinfection Byproducts Rule contained in 40 CFR §141.620(c)(1) - (5) will cease. The commission adopts Figure: 30 TAC §290.115(a)(2), Date to Start Stage 2 Compliance, to present the information in a clear and organized manner. The commission made a conforming change to Figure: 30 TAC §290.115(a)(2) to include the allowance of a 2-year extension for systems that must make capital improvements that is contained in 40 CFR §141.620(c)(5) in a footnote to the table. New §290.115(a)(2)(A) is adopted to contain the requirement of the federal DBP2 in 40 CFR §141.620(c)(6) that establishes the start date for systems performing quarterly monitoring. New §290.115(a)(2)(B) is adopted to contain the requirement of 40 CFR §141.620(c)(6)(ii) that establishes the start date for systems monitoring less frequently than quarterly.

The commission adopts new §290.115(b) to contain the MCL of existing §290.113(b); to incorporate the new MCL compliance method of the federal DBP2 in 40 CFR §141.625(b); and to contain the operation evaluation levels (OELs) for total trihalomethanes (TTHM) and the regulated haloacetic acids-group of five (HAA5) of 40 CFR §141.626. New §290.115(b)(1) is adopted to incorporate the MCLs for TTHM and HAA5 from existing §290.113(b), consistent with the MCLs set by the federal DBP2 in 40 CFR §141.64(b)(1)(i) and 40 CFR §141.625(b). New §290.115(b)(1)(A) is adopted to contain the MCL for TTHM from existing §290.113(b)(1) and new §290.115(b)(1)(B) is adopted to contain the MCL for HAA5 from existing §290.113(b)(2).

The commission adopts new §290.115(b)(2) to contain the calculation basis for determining the OEL of the federal DBP2 in 40 CFR §141.626(a). New §290.115(b)(2)(A) is adopted to contain the OEL for TTHM and §290.115(b)(2)(B) is adopted to contain the OEL for HAA5 from 40 CFR §141.626(a).

The commission adopts new §290.115(c) to contain the Stage 2 monitoring requirements for TTHM and HAA5 and to contain the elements of existing §290.113(c) that continue to apply under the new federal DBP2 rule.

The commission adopts new §290.115(c)(1) to contain the Stage 2 requirement of 40 CFR §141.600(a) that systems must determine Stage 2 compliance monitoring locations with representative high TTHM and HAA5 concentrations throughout the distribution system. In addition, the commission incorporates the dates that public water systems must determine these sites, as provided in the federal DBP2, 40 CFR §141.620(c)(1) - (5). This information is in Figure: 30 TAC §290.115(c)(1), Date to Establish Stage 2 Sites.

The commission adopts new §290.115(c)(1)(A) to contain the federal requirement of 40 CFR §141.600(b) that if a system is required to perform initial distribution system evaluation (IDSE) sampling, then that system must use those results when determining Stage 2 compliance locations.

The commission adopts new §290.115(c)(1)(B) to contain the related provision of 40 CFR §141.622(a)(2) describing the process that systems which are not required to do the early IDSE sampling must use to set Stage 2 compliance monitoring locations.

The commission adopts new §290.115(c)(1)(B)(i) to contain the provision of 40 CFR §141.622(a)(2) that systems which are required to have the same number of sample sites under both the Stage 1 and Stage 2 requirements can continue to use their existing Stage 1 sample locations under the new Stage 2 rules.

The commission adopts new §290.115(c)(1)(B)(ii) to contain the provision of 40 CFR §141.622(a)(2) requiring that systems with fewer existing Stage 1 sampling locations than the number of locations required by Stage 2 must identify additional sampling sites, and describing the required nature of these sample sites.

The commission adopts new §290.115(c)(1)(B)(iii) to contain the provision of 40 CFR §141.622(a)(2) that if a system has more existing Stage 1 sites than they are required to have under Stage 2, that the sites with highest TTHM and HAA5 levels must be used for Stage 2 compliance.

The commission adopts new §290.115(c)(1)(C) to incorporate the protocol for selecting Stage 2 sample sites given in the federal DBP2 in 40 CFR §141.605(c) by reference.

The commission adds new §290.115(c)(1)(D) to conform to the federal DBP2 rule in 40 CFR §141.622(c) establishing that when a system changes monitoring locations it must replace the location with the lowest disinfection by-product levels with locations that have potentially high disinfection by-product levels.

The commission adopts new §290.115(c)(2) to contain the routine Stage 2 sampling requirements of 40 CFR §141.621(a)(2) and to contain the existing requirement of §290.113(c)(2) that compliance samples must be collected under normal operating conditions. Section 290.115(c)(2) also contains Figure: 30 TAC §290.115(c)(2), Routine Stage 2 Monitoring Frequency and Number of Sites, which is included to present the dates in a clear and organized manner. In response to comment, the commission changed the first two lines in the far right column in Figure: 30 TAC §290.115(c)(2) from the number "1" to the phrase "1 or 2". In response to comment, the commission changed the ninth and tenth lines in the far right column from the number "1" to the number "2" in Figure: 30 TAC §290.115(c)(2) and added a reference to Footnote 3. Also in response to comment, the commission modified Footnote 3 in Figure: 30 TAC §290.115(c)(2) to clarify the conditions under which either one sample or two samples must be collected. The commission changed Footnote 4 in Figure: 30 TAC §290.115(c)(2) to establish that dual sample sets must be taken every 90 days in conformance with Footnote 2 to the Figure in 40 CFR §141.621(a)(2).

The commission adopts new §290.115(c)(3) to contain the reduced Stage 2 sampling locations and frequency of 40 CFR §141.623, which allows systems to sample less frequently if there are relatively low levels of TTHM and HAA5 detected in the distribution system. Section 290.115(c)(3) also contains Figure: 30 TAC §290.115(c)(3), Reduced Stage 2 Monitoring Frequency and Number of Sites, which is included to present the information in a clear and organized manner. In response to comment, the commission amended Footnote 2 in Figure: 30 TAC §290.115(c)(3) to remain consistent with the federal DBP2 rule published January 4, 2006.

The commission adopts new §290.115(c)(3)(A) to contain the requirement of 40 CFR §141.623(a) that only compliance data may be used to qualify for reduced monitoring.

The commission adopts new §290.115(c)(3)(B) to contain the provisions of DBP2 relating to qualification to start reduced monitoring. The commission adopts new §290.115(c)(3)(B)(i) to contain the provisions of 40 CFR §141.132(b)(1)(iv) and 40 CFR §141.623(b) describing the conditions under which systems that are sampling annually or triennially may remain on reduced monitoring. The commission adopts new §290.115(c)(3)(B)(ii) to contain the provisions of 40 CFR §141.623(b) describing the conditions under which a system sampling quarterly may remain on reduced monitoring. The commission adopts new §290.115(c)(3)(B)(iii) to contain the provisions of 40 CFR §141.132(b)(1)(iii) and §141.623(a) describing the total organic carbon levels that must be maintained to allow a system treating surface water or groundwater under the direct influence of surface water to qualify for reduced monitoring. In response to comment, the commission modified a reference in §290.115(c)(3)(B)(iii) to state that monitoring must be conducted in accordance with §290.112(c)(2)(C) where previously the reference was §290.112 which is consistent with 40 CFR §141.132(b)(1)(iii) and §141.623(a).

The commission adopts new §290.115(c)(3)(C) to contain the provisions of 40 CFR §141.623(c) describing when systems will be returned to routine monitoring after reduced monitoring. The commission adopts new §290.115(c)(3)(C)(i) to contain the provision of 40 CFR §141.623(c) describing the conditions under which a system sampling quarterly will be returned to routine monitoring. The commission adopts new §290.115(c)(3)(C)(ii) to contain the provision of 40 CFR §141.623(c) describing the conditions under which a system sampling annually or triennially will be returned to routine monitoring. New §290.115(c)(3)(C)(iii) is adopted to contain the provision of 40 CFR §141.623(c) describing the total organic carbon conditions under which a system treating surface water or groundwater under the direct influence of surface water will be returned to routine monitoring.

The commission adopts new §290.115(c)(3)(D) to contain the provision of 40 CFR §141.623(c) providing state authority to return a system to its routine monitoring schedule at any time.

The commission adopts new §290.115(c)(3)(E) to contain the provisions 40 CFR §141.627 requiring systems that are on reduced monitoring for Stage 1 and that have different monitoring locations for Stage 1 than for Stage 2 to initiate routine Stage 2 monitoring at the inception of the rule's effective dates.

The commission adopts new §290.115(c)(3)(F) to contain the conditions of 40 CFR §141.627 under which a system on reduced monitoring for Stage 1 may remain on reduced monitoring without interruption in the transition to Stage 2. The commission adopts new §290.115(c)(3)(F)(i) - (iii) to contain the provisions of 40 CFR §141.627 establishing that a system must have received a waiver to initial distribution system sampling, meet Stage 2 reduced monitoring criteria, and have the same Stage 1 and Stage 2 monitoring locations to remain on reduced monitoring through the transition to the Stage 2 rule requirements.

The commission adopts new §290.115(c)(3)(G) to contain the provisions of 40 CFR §141.629(a)(3) allowing the executive director to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

The commission adopts new §290.115(c)(4) to contain the increased monitoring provisions of the federal DBP2 in 40 CFR §141.625. The commission adopts new §290.115(c)(4)(A) to contain the provision of 40 CFR §141.625(a) requiring a system on less frequent monitoring to increase monitoring to quarterly if any compliance sample exceeds a maximum contaminant level. The commission adopts new §290.115(c)(4)(B) to contain

the conditions of 40 CFR §141.625(c) under which a system on increased quarterly monitoring may be returned to routine monitoring. The commission deleted the phrase "for which" and replace it with the word "if" in §290.115(c)(4)(B) to conform to the federal DBP2 rule in 40 CFR §141.620(e). This allows a system to return to routine monitoring after four quarters of increased quarterly monitoring if, at that time, the LRAA is less than three quarters of the MCL. If the commission did not make this change, as written, the proposed rule would require that the LRAA remain less than three quarters of the MCL for four consecutive quarters. The commission adopts new §290.115(c)(4)(C) to contain the provisions of 40 CFR §141.628 setting sample locations and timing for increased monitoring.

The commission adopts new §290.115(c)(5) to contain the provisions of the federal DBP2 in 40 CFR §141.600 for initial distribution system evaluation sampling (IDSE). The commission adopts new §290.115(c)(5)(A) to contain the provisions of 40 CFR §141.600(d)(1) providing conditions under which very small systems (VSS) may waive IDSE sampling. In response to comment, the commission added new §290.115(c)(5)(D) to establish that the executive director may require IDSE sampling for systems in any circumstance consistent with 40 CFR §141.600(d)(2).

The commission adopts §290.115(c)(5)(B) to contain the provisions and timing of 40 CFR §141.600(d)(1) providing conditions under which the executive director may grant a waiver of IDSE sampling to systems that have shown very low levels of TTHM and HAA5 in Stage 1. Section §290.115(c)(5)(B) also contains Figure: 30 TAC §290.115(c)(5)(B), Timing of Stage 1 Samples Evaluated for 40/30 IDSE Waiver, which is included to present the information in an organized and clear manner. The commission adopts new §290.115(c)(5)(B)(i) to establish the criteria of 40 CFR §141.603(b)(1) requiring that each sample a system collected under Stage 1 must have been less than half the maximum contaminant level to waive IDSE sampling. The commission adopts new §290.115(c)(5)(B)(ii) to contain the provisions of 40 CFR §141.603(b)(2) requiring submittal of data to qualify to waive IDSE sampling. The commission adopts new §290.115(c)(5)(B)(iii) to contain the authority granted the state in 40 CFR §141.603(b)(3) to require IDSE sampling even if the system meets other qualification requirements. In response to comment, the commission changed §290.115(c)(5)(B) so that it does not limit the type of sample used to determine eligibility for a 40/30 waiver to compliance samples. In response to comment, to be consistent with 40 CFR §141.603(a), the words "compliance samples" were replaced with the word "levels" in §290.115(c)(5)(B). In response to comment, the commission deleted the word "compliance" in §290.115(c)(5)(B)(i), consistent with 40 CFR §141.603(a).

The commission adopts new §290.115(c)(5)(C) to incorporate the provisions of the federal DBP2 in 40 CFR §141.600(c) giving planning requirements, sampling schedules and reporting elements for systems that are required to perform IDSE sampling. Section §290.115(c)(5)(C) also contains Figure: 30 TAC §290.115(c)(5)(C), IDSE Schedule, which is included to present the information in a clear and organized manner.

The commission adopts new §290.115(c)(5)(C)(i) to list the required IDSE sampling plan elements. New §290.115(c)(5)(C)(i)(I) is adopted to include the provisions of 40 CFR §141.601(a)(1) describing the required IDSE sampling plan. New §290.115(c)(5)(C)(i)(II) is adopted to include the provisions of 40 CFR §141.601(a)(2) relating to justification for sample site selection. In response to comment, new §290.115(c)(5)(C)(i)(III) was added to require that the IDSE plan include the system type and population served by the system, to be consistent with 40 CFR §141.601(a)(3).

The commission adopts new §290.115(c)(5)(C)(ii) to describe how IDSE sampling must proceed in accordance with 40 CFR §141.601(a)(1) and (b). New §290.115(c)(5)(C)(ii)(I) is adopted to incorporate the required number and type of IDSE sites of 40 CFR §141.601(a)(1). Section §290.115(c)(5)(C)(ii)(I) contains Figure: 30 TAC §290.115(c)(5)(C)(ii)(I), Number and Type of IDSE Sample Sites, which is included to present the information in a clear and organized manner. In response to comment, the commission corrected the typographical error in Figure: 30 TAC §290.115(c)(5)(C)(ii)(I) by adding the number "1" under the column headed "Potential High TTHM Locations," consistent with 40 CFR §141.601(b)(1). The commission adopts new §290.115(c)(5)(C)(ii)(II) to include the requirement for collection of dual sample sets at each monitoring location given in 40 CFR §141.601(a)(1). The commission adopts new §290.115(c)(5)(C)(ii)(III) to incorporate the provision of 40 CFR §141.601(a)(2) that IDSE sample locations must be different than the existing Stage 1 monitoring locations. The commission adopts new §290.115(c)(5)(C)(ii)(VI) to incorporate the requirement of 40 CFR §141.601(a)(2) requiring that IDSE sample locations must be distributed throughout the distribution system. The commission adopts new §290.115(c)(5)(C)(ii)(V) to incorporate the provisions of 40 CFR §141.601(a)(1) describing the frequency of IDSE monitoring. Section §290.115(c)(5)(C)(ii)(V) contains Figure: 30 TAC §290.115(c)(5)(C)(ii)(V), Frequency of IDSE Monitoring, which is included to present the information in a clear and organized manner. The commission adopts §290.115(c)(5)(C)(ii)(VI) to incorporate the requirement of 40 CFR §141.601(a)(4) that the IDSE monitoring frequency and locations may not be reduced.

The commission adopts new §290.115(c)(5)(C)(iii) to incorporate the provisions of 40 CFR §141.601(c) describing the required elements of the IDSE report. The commission adopts new §290.115(c)(5)(C)(iii)(I) to incorporate the provisions of 40 CFR §141.601(c)(1) requiring that the data be reported in the format directed by the executive director, as provided in regulatory guidance. The commission adopts new §290.115(c)(5)(C)(iii)(II) to incorporate the provision of 40 CFR §141.601(c)(1) that a system must provide a new map or other documentation if changes occurred to the system after submittal of the IDSE plan. The commission adopts new §290.115(c)(5)(C)(iii)(III) to incorporate the provisions of 40 CFR §141.601(c)(2) requiring that the IDSE report must include an explanation of any deviations from the approved initial distribution system evaluation plan. The commission adopts new §290.115(c)(5)(C)(iii)(IV) to incorporate the requirements of 40 CFR §141.601(c)(3) requiring that the IDSE report recommend and justify Stage 2 sample sites under DBP2.

The commission adopts new §290.115(c)(5)(C)(iv) to allow systems to meet the initial distribution system requirements through submittal of a system specific study, as described in 40 CFR §141.602. The system specific study requirements are complex and expected to be used by few systems.

In response to comment, the commission added new §290.115(c)(5)(D) to allow the executive director to require a system to perform IDSE sampling or a system specific study under any circumstances.

The commission adopts new §290.115(d) to establish that compliance samples analyzed for TTHM and HAA5 must be ana-

lyzed using the methods contained in the federal DBP2 in 40 CFR §141.600(e).

The commission adopts new §290.115(e) to include the reporting requirements for TTHM and HAA5 of existing §290.113(e) and 40 CFR §141.626 and §141.629. The commission adopts new §290.115(e)(1) to incorporate the requirements of existing §290.113(e) requiring systems to report to the executive director results of any test related to TTHM or HAA5. The commission adopts new §290.115(e)(1)(A) to incorporate the provision of the federal DBP2 in 40 CFR §141.629(a)(1)(i) for submitting quarterly results. The commission adopts new §290.115(e)(1)(A)(i) to incorporate the provision of 40 CFR §141.629(a)(1)(i) requiring systems to report the number of samples taken during the last quarter. The commission adopts new §290.115(e)(1)(A)(ii) to incorporate the provision of 40 CFR §141.629(a)(1)(ii) that systems report the date and results of each sample taken during the previous quarter. The commission adopts new §290.115(e)(1)(A)(iii) to contain the provision of 40 CFR §141.629(a)(1)(iii) that systems must report compliance calculations. New §290.115(e)(1)(A)(iv) is adopted to include the provision of 40 CFR §141.629(a)(1)(iv) that systems must report whether the MCL was exceeded at any monitoring location. The commission adopts new §290.115(e)(1)(A)(v) to incorporate the provision of 40 CFR §141.629(a)(1)(v) that systems must report exceedance of an operation evaluation level.

The commission adopts new §290.115(e)(1)(B) to incorporate the provision of 40 CFR §141.629(a)(1)(iii) relating to reporting locational running annual average exceedances.

The commission adopts new §290.115(e)(1)(C) to incorporate the provisions of 40 CFR §141.629(a)(2) and (2)(v) relating to total organic carbon and disinfectant residual reporting requirements, respectively, for systems treating surface water or groundwater under the direct influence of surface water and seeking to conduct reduced monitoring.

The commission adopts new §290.115(e)(2) to incorporate the operation evaluation reporting requirements of the federal DBP2 in 40 CFR §141.626. New §290.115(e)(2)(A) is adopted to incorporate the schedule of 40 CFR §141.626(b)(1) requiring systems to submit required operation evaluation reports 90 days after an operation evaluation level exceedance. The commission adopts new §290.115(e)(2)(B) to contain the description of the contents of an operation evaluation report. The commission adopts new §290.115(e)(2)(B)(i) - (vi) to list the specific areas of distribution system operation to be discussed in the operation evaluation report. The commission adopts new §290.115(e)(2)(C) to incorporate the provision of 40 CFR §141.626(b)(2)(i) allowing the scope of an operation evaluation report to be limited with executive director approval, and requiring that limitation to be documented in writing as provided by 40 CFR §141.626(b)(2)(ii). The commission adopts new §290.115(e)(2)(D) to contain the requirement of 40 CFR §141.626(b)(1) that the operation evaluation report be submitted and approved in writing.

The commission adopts new §290.115(f) to contain the existing compliance determination requirements of §290.113(f) and additional requirements for compliance calculations and requirements of the new federal rule. The commission adopts new §290.115(f)(1) to contain the MCL compliance determination provision of the federal DBP2 in 40 CFR §141.625(b) requiring that compliance be based on the locational running annual average, and specifying the MCL violations for TTHM and HAA5. The commission adopts new §290.115(f)(1)(A) to contain the existing requirements of §290.113 that compliance will be calculated based on approved sample sites, and that invalidated samples will not be used for determining compliance. Additionally, new §290.115(f)(1)(A) is adopted to incorporate the provisions of 40 CFR §141.625(b) that compliance will be calculated based on the locational running annual average of quarterly samples, but if one sample would cause an MCL exceedance even if following quarters had low concentrations of TTHM or HAA5, compliance calculations may use less than four quarters of data. In addition, new §290.115(f)(1)(A) is adopted to incorporate the provisions of 40 CFR §141.625(b) that if a system fails to collect all required samples, compliance will be based on the available data.

The commission adopts new §290.115(f)(1)(B) to provide the starting schedule for compliance determination under the new federal rule, as provided in 40 CFR §141.620(c). New §290.115(f)(1)(B)(i) is adopted to incorporate the start time for Stage 2 compliance determination for systems monitoring quarterly in accordance with 40 CFR §141.620(c)(7). New §290.115(f)(1)(B)(ii) is adopted to incorporate the start time for Stage 2 compliance determination for systems where a locational running annual average would be exceeded regardless of the results of subsequent quarters, as contained in 40 CFR §141.620(c)(7). The commission deleted the word "routine" in proposed §290.115(f)(1)(B)(ii) for consistency with 40 CFR §141.620(c)(7) to make conforming changes to match federal language. The compliance determination schedules in 40 CFR §141.620(c)(7) apply to a system on quarterly monitoring regardless of whether they are on a reduced, increased, or routine quarterly schedule. The commission adopts new §290.115(f)(1)(B)(iii) to incorporate the start time for Stage 2 compliance determination for systems that are required to monitor less frequently than quarterly, as contained in 40 CFR §141.620(c)(7). The commission adopts new §290.115(f)(1)(B)(iv) to incorporate the start time for systems monitoring annually or triennially that start monitoring quarterly in the quarter following an exceedance, as contained in 40 CFR §141.629(a)(1)(iii). The commission deleted the word "quarterly" and replaced it with the phrase "all available" to conform with the federal DBP2 rule in 40 CFR §141.620(d)(1).

The commission adopts new §290.115(f)(1)(C) to contain the requirement of existing §290.113(f)(7) that if a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period. The commission adopts new §290.115(f)(1)(D) to incorporate the provision of 40 CFR §141.629(a)(3) that the executive director may choose to perform calculations and determine MCL exceedances in lieu of having the system report that information. The commission adopts new §290.115(f)(1)(E) to incorporate the provision of 40 CFR §141.600(f) establishing that initial distribution system evaluation results will not be used for the purpose of compliance determination.

The commission adopts new §290.115(f)(2) to contain the requirements for monitoring violations from existing §290.113 and from the new federal rule. The provisions of the federal DBP2 in 40 CFR §141.625(b) defining a monitoring violation and its period are adopted to §290.115(f)(2). Additionally, the commission adopts this requirement to make it clearer that violations will accrue against the system on a quarterly basis to conform to the federal DBP2 in 40 CFR §141.620(e).

The commission adopts new §290.115(f)(2) to remove an unrelated annual period provision and a redundant phrase. Addi-

tionally, the commission added that the violation would occur for any system on a quarterly monitoring schedule. The commission made these changes to conform with 40 CFR §141.620(e).

The commission adopts new §290.115(f)(3) to establish a monitoring violation related to the requirement under adopted §290.115(e)(2) that systems may be required to perform monitoring in order to evaluate distribution system operation. The commission adopts new §290.115(f)(4) to contain the monitoring violation requirement of existing §290.113(f)(2) relating to a system's responsibility to perform compliance monitoring. The commission adopts new §290.115(f)(5) to establish a reporting violation related to the requirement under adopted §290.115(e)(2) that systems submit any required operation evaluation report to the executive director. The commission adopts new §290.115(f)(6) to explicitly identify the type of violation resulting from failure to perform a required public notification for consistency with PNR requirements specified in publication EPA 816-R-01-010, Final State Implementation Guidance for the Public Notification Rule (PN) Rule.

The commission adopts new §290.115(g) to contain the existing public notification requirements of §290.113(g) and to add requirements related to the new federal rule. The commission adopts new §290.115(g)(1) to contain the MCL public notification requirement of existing §290.113(g)(1). The commission adopts new §290.115(g)(2) to contain the monitoring violation requirements of existing §290.113(g)(2). The commission adopts new §290.115(g)(3) to contain the provision of the federal DBP2 in 40 CFR §141.601(c)(4) that any initial distribution system evaluation compliance documents must be made available to the executive director or the public upon request. In response to comment, the reference to subsection (c)(5)(C) was changed to a reference to subsection (c)(5), thus referencing all documentation related to IDSE activities. The commission adopts new §290.115(g)(4) to incorporate the provision of 40 CFR §141.626(b)(1) that operation evaluation reports must be made available to the executive director or the public upon request.

The commission adopts new §290.116, Groundwater Corrective Actions and Treatment Techniques, to incorporate the new federal corrective action and treatment technique requirements for groundwater systems contained in the federal GWR in 40 CFR §141.403.

The commission adopts new §290.116(a) to incorporate the applicability of the corrective action and treatment technique requirements for groundwater systems as described in the federal GWR in 40 CFR §141.403(a).

The commission adopts new §290.116(a)(1) to incorporate the requirements and applicability of the treatment technique requirements for groundwater systems with existing sources not required to meet the groundwater source monitoring requirements as described in the federal GWR in 40 CFR §141.403(b). In response to comment, the commission corrects a typographical error and restores the "(c)" to the following phrase: "in accordance with subsection (c) of this section."

The commission adopts new §290.116(a)(2) to specify the requirements and applicability of the treatment technique requirements for groundwater systems with new sources not required to meet the groundwater source monitoring requirements as described in 40 CFR §141.403(b).

The commission adopts new §290.116(b) to give the corrective action plan requirements for groundwater systems that have a fecal indicator positive source sample as described in the federal GWR in 40 CFR §141.403(a)(4).

The commission adopts new §290.116(b)(1) to establish the time frame in which a system has to consult with the state and develop a corrective action plan to address the fecal indicator positive source sample as described in 40 CFR §141.403(a)(4).

The commission adopts new §290.116(b)(2) to establish the time frame for public water systems to comply with the corrective action plan to address the fecal indicator positive source sample as described in 40 CFR §141.403(a)(5).

The commission adopts new §290.116(b)(3) to require executive director approval before any changes to the corrective action plan as described in the federal GWR in 40 CFR §141.403(a)(5)(ii)(A).

The commission adopts new §290.116(b)(4) which allows the executive director to establish interim measures to protect public health in addition to the requirements of the corrective action plan as described in the federal GWR in 40 CFR §141.403(a)(5)(ii)(B).

The commission adopts new §290.116(b)(5) to incorporate corrective action options required for corrective action plans as described in the federal GWR in 40 CFR §141.403(a)(6).

The commission adopts new §290.116(b)(5)(A) to incorporate well disinfection and fecal indicator monitoring as a corrective action option consistent with 40 CFR §141.403(a)(4) and the special primacy requirements of 40 CFR §142.16(o)(1)(iii).

The commission adopts new §290.116(b)(5)(B) to incorporate the corrective action of eliminating the groundwater source that was found to be fecal indicator positive as defined in 40 CFR §141.403(a)(6)(ii).

The commission adopts new §290.116(b)(5)(C) to incorporate the corrective action of eliminating the source of fecal contamination, followed by well disinfection and source monitoring as defined in 40 CFR §141.403(a)(6)(iii).

The commission adopts new §290.116(b)(5)(D) to incorporate the corrective action of providing 4-log treatment of viruses as defined in 40 CFR §141.403(a)(6)(iv).

The commission adopts new §290.116(c) requiring groundwater systems to demonstrate 4-log treatment of viruses by meeting minimum disinfection requirements as required by the federal GWR in 40 CFR §141.403(b) and maintaining consistency with disinfectant monitoring requirements of existing §290.110(c).

The commission adopts new §290.116(c)(1) requiring groundwater systems to monitor the performance of chemical disinfection facilities as required by 40 CFR §141.403(b) and maintaining consistency with disinfectant monitoring requirements of existing §290.110(c).

The commission adopts new §290.116(c)(1)(A) to incorporate the monitoring requirements of groundwater systems serving a population greater than 3,300 that are achieving 4-log viral inactivation as required by 40 CFR §141.403(b)(3)(i)(A).

The commission adopts new §290.116(c)(1)(B) to incorporate the disinfectant monitoring requirements needed to achieve 4-log viral inactivation for groundwater systems serving a population less than 3,300 as required by 40 CFR §141.403(b)(3)(i)(B) consistent with the disinfectant monitoring requirements of existing §290.110(c)(1)(A).

The commission adopts new §290.116(c)(1)(C) to establish the requirements for disinfection contact time as it relates to the disinfectant monitoring requirements of 40 CFR §141.403(b)(3)(i) and to maintain consistency with contact time determination requirements of existing §290.110(c)(1)(B).

The commission adopts new §290.116(c)(1)(D) to establish the requirements for increased disinfection monitoring if appropriate levels of treatment are not achieved. This relates to the disinfectant monitoring requirements of 40 CFR §141.403(b)(3)(i) and maintains consistency with contact time determination requirements of §290.110(c)(1)(C).

The commission adopts new §290.116(c)(2) requiring groundwater systems to monitor the performance of UV light disinfection facilities as allowed by the federal GWR in 40 CFR §141.403(b)(3)(ii) which specifies the monitoring requirements for alternative treatment and by 40 CFR §141.720(d)(3)(i) which establishes the monitoring requirements for UV light disinfection facilities.

The commission adopts new §290.116(c)(3) to apply the analytical requirements for disinfectant monitoring provided in existing §290.110(d) to the groundwater systems that must meet the requirements of this section. These existing requirements apply to systems operating under normal conditions described in §290.110 and also apply to systems performing corrective action or treatment under the federal GWR, as detailed throughout adopted §290.116.

The commission adopts new §290.116(c)(3)(A) to specify that the analytical requirements for pH meters contained in existing §290.110(d)(1) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(B) to specify that the analytical requirements for temperature measurements as given in existing §290.110(d)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(C) to specify that the analytical requirements for measuring free chlorine residual as specified in existing §290.110(d)(3) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(C)(i) to specify that apply the analytical requirements for measuring free chlorine residual using amperometric titration as provided in §290.110(d)(3)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(C)(ii) to specify that the analytical requirements for measuring free chlorine residual using DPD Ferrous titration as set out in existing §290.110(d)(3)(B) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(C)(iii) to specify that apply the analytical requirements for measuring free chlorine residual using a DPD method using a colorimeter or spectrophotometer as described in existing §290.110(d)(3)(C) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(C)(iv) to specify that the analytical requirements for measuring free chlorine residual using springaldizine as given in existing §290.110(d)(3)(D) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(D) to specify that the analytical requirements for measuring chloramine residual given in existing §290.110(d)(4) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(D)(i) to specify that the analytical requirements for measuring chloramine residual using amperometric titration specified in existing §290.110(d)(4)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(D)(ii) to specify that the analytical requirements for measuring chloramine residual using DPD Ferrous titration in existing §290.110(d)(4)(B) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(D)(iii) to specify that the analytical requirements for measuring chloramine residual using a DPD that uses a colorimeter or spectrophotometer of existing §290.110(d)(4)(C) and (C)(i) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(E) to specify that the analytical requirements for measuring chlorine dioxide residual as defined in existing §290.110(d)(5) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(E)(i) to specify that the analytical requirements for measuring chlorine dioxide residual using amperometric titration as defined in existing §290.110(d)(5)(A) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(E)(ii) to specify that the analytical requirements for measuring chlorine dioxide residual using Lissamine Green B as defined in the federal GWR in 40 CFR §141.74(a)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(c)(3)(F) to specify that the analytical requirements for measuring ozone residual as defined in the federal GWR in 40 CFR §141.74(a)(2) also apply to the groundwater systems that must meet the requirements of this section.

The commission adopts new §290.116(d) establishing the reporting requirements for groundwater systems required to meet the criteria of this section as required by the federal GWR in 40 CFR §141.405.

The commission adopts new §290.116(d)(1) establishing the treatment reporting requirements for groundwater systems required to meet the 4-log treatment of viruses as required by 40 CFR §141.405(a)(1).

The commission adopts new §290.116(d)(2) establishing the notification requirements for groundwater systems achieving 4-log treatment of viruses that are not subject to raw groundwater source monitoring as required by 40 CFR §141.403(b). This paragraph also establishes the December 1, 2009 deadline for this notification.

The commission adopts new §290.116(d)(3) requiring groundwater systems to notify the executive director within 30 days of completing the required corrective action in accordance with the federal GWR in 40 CFR §141.405(a)(2).

The commission adopts new §290.116(d)(4) requiring a groundwater system that fails to conduct triggered source monitoring to provide written documentation that it was providing 4-log treatment of viruses within 30 days of the positive distribution coliform sample. This paragraph incorporates the requirements of the federal GWR in 40 CFR §141.405(a)(3).

The commission adopts new §290.116(e) establishing the compliance determination requirements for groundwater systems required to meet the criteria of this section as required by the federal GWR in 40 CFR §141.404.

The commission adopts new §290.116(e)(1) to incorporate 40 CFR §141.404(b)(1) establishing the violation of the treatment technique requirement if a groundwater system does not complete corrective action in accordance with the executive director approved corrective action plan or interim measures required by the executive director.

The commission adopts new §290.116(e)(2) to incorporate 40 CFR §141.404(b)(2) establishing the violation of the treatment technique requirement if a groundwater system is not in compliance with the executive director approved corrective action plan and schedule.

The commission adopts new §290.116(e)(3) to incorporate 40 CFR §141.404(c) establishing the violation of the treatment technique requirement if a groundwater system fails to maintain at least 4-log treatment of viruses and the failure is not corrected within four hours.

The commission adopts new §290.116(e)(4) establishing the monitoring violation for groundwater systems that fail to conduct the required disinfectant monitoring.

The commission adopts new §290.116(e)(5) establishing the reporting violation for groundwater systems that fail to report the results of the required disinfectant monitoring.

The commission adopts new §290.116(e)(6) establishing a public notice violation for groundwater systems that fail to issue required public notice.

The commission adopts new §290.116(f) to incorporate the federal GWR in 40 CFR §141.404(d) establishing the public notice requirement for treatment technique, monitoring, or reporting violations as given in this section.

Section 290.117, Regulation of Lead and Copper, contains the action levels, sampling requirements, reporting requirements, and public education requirements for lead and copper, which can be released into drinking water under corrosive conditions. The commission adopts §290.117 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to remove references to effective dates that have passed, to correct internal references, and to correct typographical and syntax errors.

The commission adopts §290.117(b) to remove initial capital letters within the catchline, in accordance with agency syntax protocols. The commission deletes the table in §290.117(c)(8) because it contains references to start dates for lead and copper monitoring that have passed and all Texas public water systems have completed the initial monitoring referred to in that table. In §290.117(d), the commission removes initial capital letters within the catchline, in accordance with agency standards. Throughout §290.117(h) internal references to the table setting the number of water quality parameter monitoring locations are corrected from §290.117(c)(8) to §290.117(h)(1)(D). The word "title" in §290.117(h)(1)(D) is replaced with the word "section" to meet agency syntax standards.

Section 290.118, Secondary Constituent Levels, contains the existing secondary, non-health-based standards in drinking water. The commission adopts the reference to certified laboratories in §290.118(d) to reflect that authority for certification of drinking water laboratories under the Safe Drinking Water Act has passed from the (then) Texas Department of Health to the TCEQ.

Section 290.119, Analytical Procedures, contains the analytical methods that are acceptable for compliance sampling of drinking water. The commission adopts §290.119(b) to update the name of the agency from "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality." In response to comment, the commission has updated its references as follows: in §290.119(a)(1), the commission made a conforming change by adding a reference to 30 TAC Chapter 25 for lab certification or accreditation, consistent with 40 CFR §141.131(b)(2); in §290.119(b)(2), the commission changed a reference from 40 CFR §141.22(a) to §141.74(a)(1); in §290.119(b)(3), the commission made a conforming change by changing the reference from 40 CFR §141.23(f) to §141.23(k); in §290.119(b)(6), the commission added a reference to 40 CFR §141.131(a) for DBP methods; in §290.119(b)(7), the commission made a conforming change by adding a reference to 40 CFR §141.74(b) for ozone disinfectant; in §290.119(b)(8), and, the commission added the words "bromide and magnesium", consistent with 40 CFR §141.131(d)(2). In response to comment, the commission added new §290.119(c) to define the term "detection" by reference to 40 CFR §141.151(d).

Section 290.121, Monitoring Plans, contains the requirements for systems to use a monitoring plan to describe when and where they take compliance samples.

The commission updates the internal references in §290.121(b)(1) to reflect inclusion of the new federal rule requirements. The commission changed §290.121(b)(5) to make conforming changes to match federal language. The requirement of 40 CFR §141.622(a)(1) relating to revision date was not in the commission's proposed rule so the following sentence was added: "The monitoring plan must be revised to show Stage 2 sample sites by the date shown in table §290.115(a)(2) entitled Date to Start Stage 2 Compliance." The commission adopts new §290.121(b)(6) to add a reference to the source water monitoring plans required under the federal GWR in 40 CFR §141.402(a)(2)(ii). The commission adopts new §290.121(b)(7) to add a reference to initial distribution system evaluation plans under the federal DBP2 in 40 CFR §141.600(1). The commission adopts new §290.121(b)(8) to add a reference to the raw water monitoring plans required under the federal LT2 in 40 CFR §141.703(f). The commission removes outdated references to effective dates starting in 2001, 2003, and 2004 from existing §290.121(c)(1) - (3) and renumbers resulting paragraphs. The commission updates §290.121(d)(1) specify that a reporting violation occurs not only when a system fails to submit a monitoring plan upon request, but also if it is required to submit its monitoring plan because it treats surface water or groundwater under the direct influence of surface water.

Section 290.122, Public Notification, contains public notification requirements for systems to follow when their drinking water fails to meet one of the drinking water standards.

The commission adopts §290.122 to add references to elements added elsewhere as part of the incorporation of new federal requirements, to correct internal references, and to correct typographical and syntax errors. The commission made a conforming change to §290.122 to include the allowance of 40 CFR §141.201(c)(2) for limiting notification to the part of the distribution system impacted by the event causing the notification.

The commission adopts the amendment to §290.122(a)(1)(B) which removes capitalization of the words from the term "Nephelometric Turbidity Unit" and incorporates public notification requirements of the federal PNR. The commission adopts new §290.122(a)(1)(B)(i) to contain the requirement of existing §290.122(a)(1)(B) regarding notification when combined filter effluent turbidity is over 5.0 NTU. The commission adopts new §290.122(a)(1)(B)(ii) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification when combined filter effluent turbidity is over 1.0 NTU at a membrane treatment plant. The commission adopts new §290.122(a)(1)(B)(iii) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification after consultation with the executive director when combined filter effluent turbidity is over 1.0 NTU at a treatment plant using technology other than membranes. The commission adopts new §290.122(a)(1)(B)(iv) to contain the requirement of the federal PNR in 40 CFR §141.202(a)(6) for notification of customers in cases where a system fails to consult with the executive director when combined filter effluent turbidity is over 1.0 NTU at a treatment plant using technology other than membranes.

The commission adopts new §290.122(a)(1)(F) to incorporate the provisions of the federal GWR in 40 CFR §141.202(a)(8) requiring groundwater systems to notify the public of detection of *E. coli* or other fecal indicators in raw groundwater source samples as an acute health violation. The subsequent paragraph is re-alphabetized to maintain alphabetical order.

The commission adopts new §290.122(b)(1)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.403(a) requiring groundwater systems to notify the public of failure to take corrective action or failure to maintain at least 4-log treatment of viruses before or at the first customer. The subsequent paragraphs are re-alphabetized to maintain alphabetical order.

The commission adopts new §290.122(b)(1)(D) to incorporate the provision of the federal LT2 in 40 CFR §141.211(a) that a system must notify customers if they fail to collect three months of required *Cryptosporidium* data. The commission amended proposed §290.122(b)(1)(D) by adding the phrase "or request bin classification from the executive director under §290.111(c)(3)(A)" and by adding an additional reference to §290.111(c)(3)(A) to conform with federal LT2 rule in 40 CFR §141.211(b).

The word "*fluoride*" was spelled incorrectly in §290.122(c)(1)(A). The commission has corrected the spelling.

The commission adopts new §290.122(d)(3)(C) to incorporate the provision of the federal LT2 in 40 CFR §141.211(d)(1), which requires surface water systems to include the mandatory contaminant-specific language in addition to any language required by the executive director, when notifying the public of repeated failure to conduct surface water source monitoring for *Cryptosporidium*. The commission amended proposed §290.122(d)(3)(C) by adding the phrase "or request bin classification from the executive director" to conform with federal LT2 rule and by adding the reference to 40 CFR §141.211(d)(2). The commission also deleted an extraneous reference to §290.111(b). Because of these changes, the commission also renumbered existing §290.122(d)(3)(C) to (D).

The commission adopts §290.122(f) to incorporate the provisions of the federal PNR 40 CFR §141.31(d) requiring a signed certificate of delivery with proof of public notification submitted to the executive director.

The commission added §290.122(i) to authorize the executive director to allow systems to notify only those customers in the area impacted by a drinking water quality problem rather than notifying all customers, including those not affected. The commission made this change to conform to the federal public notice rule in 40 CFR §141.201(c)(2).

Subchapter H: Consumer Confidence Reports

Subchapter H contains the requirements for community water systems to deliver a report of drinking water quality, called a Consumer Confidence Report, to all of their customers annually. The commission amends Subchapter H, Consumer Confidence Reports, to incorporate provisions of the federal GWR, LT2, and GWR rules. Since 1998, all public water systems have been required to send their customers and annual report of drinking water quality called the Consumer Confidence Report. All new regulations from EPA, such as the GWR, LT2, and DBP2, contain provisions for how to notify customers regarding any new contaminants or new ways of calculating compliance. The commission also adopts administrative changes throughout these sections to be consistent with Texas Register requirements and with Subchapter D and Subchapter F of Chapter 290.

Section 290.272, Content of the Report, describes the required contents of the consumer confidence reports.

The commission adopts new §290.272(c)(4)(D)(iii) requiring systems to include the highest locational running average and range of individual sample results for total trihalomethanes and haloacetic acids for all monitoring locations expressed in the same units as the MCL, consistent with the federal DBP2 in 40 CFR §141.53(d)(4)(iv)(B).

The commission adopts new §290.272(e)(7) to incorporate the provisions of the federal DBP2 in 40 CFR §141.153(d)(4)(iv)(c) requiring systems to include individual sample results in calculations for the initial distribution system evaluation to be reported in the annual consumer confidence report.

The commission adopts new §290.272(g)(7) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i) require inclusion in the consumer confidence report of any fecal indicator-positive groundwater source sample that is not invalidated by the executive director.

The commission adopts new §290.272(g)(7)(A) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(A) that a system must notify its customers of the source of any fecal contamination, if that source is known, and notify them of the dates that the fecal indicator was detected in the source. The commission adopts new §290.272(g)(7)(B) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(B) that a system must notify its customers of any actions that have been taken to address the fecal contamination, and the date of such action. The commission adopts new §290.272(g)(7)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(C) that a system must notify its customers of the plan to address any fecal contamination and any progress that has been made towards addressing the contamination. The

commission adopts new §290.272(g)(7)(D) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(D) that a system must notify its customers using the mandatory health effects language.

The commission adopts new §290.272(g)(8) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i) to require the consumer confidence report to describe any significant deficiency. The commission adopts new §290.272(g)(8)(A) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(A) that a system must notify its customers of any significant deficiency and the date that it was identified. The commission adopts new §290.272(g)(8)(B) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(i)(B) that a system must notify its customers of their plan for addressing any significant deficiency. The commission adopts new §290.272(g)(8)(C) to incorporate the provisions of the federal GWR in 40 CFR §141.53(h)(6)(ii) that a system must notify its customers of any significant deficiency that was corrected and the date that it was corrected. Significant deficiencies are part of the special primacy conditions for the state of 40 CFR Part 142. This requires states to define at least one significant deficiency related to each of the eight sanitary survey elements: source, treatment, distribution, storage facilities, pressure maintenance facilities, data reporting, system management, and operator compliance with licensing.

Section 290.273, Required Additional Health Information, provides the required additional health information that must be included in consumer confidence reports.

The commission adopts §290.273(b) to remove the transition level and language for reporting arsenic levels consistent with the requirements of 40 CFR §141.154 because applicability has passed.

Section 290.275, Appendices A - D, provides the mandatory language used to explain contaminant detections and violations in the consumer confidence reports.

Section §290.275(1) is Figure: 30 TAC §290.275(1), Appendix A--Converting Maximum Contaminant Level Compliance Values for Consumer Confidence Reports. The commission adopts §290.275(1) to insert the language of 40 CFR Appendix A to Subpart O relating to the maximum contaminant compliance value for fecal indicators of drinking water as number 3. Subsequent table elements are renumbered to maintain the table sequence.

The commission removes footnote 1 of §290.275(1) related to the effective date of the arsenic MCL since this date has passed.

Section 290.275(2) is Figure: 30 TAC §290.275(2), Appendix B--Sources of Regulated Contaminants. The commission adopts §290.275(2) to insert the language of the federal GWR in 40 CFR Appendix A to Subpart O relating to the source of fecal indicators of drinking water as number 3. Subsequent table elements are renumbered to maintain the table sequence.

The commission removes footnote 1 of §290.275(2) related to the effective date of the arsenic MCL which has passed.

Section 290.275(3) is Figure: 30 TAC §290.275(3), Appendix C--Health Effects Language. The commission adopts §290.275(3) to insert the health effects language of the federal GWR in 40 CFR Subpart O, Appendix A relating to the mandatory health effects language for fecal indicators in drinking water as number 3. Subsequent table elements are renumbered accordingly to maintain the table sequence.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because, while the rule is intended to reduce risks to human health from environmental exposure, it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted amendments is to incorporate recent changes in the federal drinking water regulations in order to maintain the state's primary enforcement responsibility with regard to drinking water. This is accomplished by enacting rules no less stringent than the federal regulations and adopting adequate procedures for implementation and enforcement of those rules. The adopted amendments require drinking water systems to meet the same regulatory standards set forth in the federal rules, while providing alternative approaches to compliance based in part on stakeholder input during meetings held on September 26, 2006; October 24, 2006; November 14, 2006; and, January 9, 2007, and taking into account special considerations related to this state's particular source water conditions. The federal regulations that would be implemented through the adopted amendments are designed to reduce risks to human health from environmental exposure by limiting public exposure to waterborne disease and enhancing the public's awareness of contamination of its drinking water.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted amendments would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted amendments will be significant with respect to the economy as a whole; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

The adopted amendments to §290.46 resulting from changes made to the THSC during the 79th Regular Session by SB 9 require a public water system to maintain internal procedures to notify the executive director in the event of a threat to the security of the water supply. This adopted provision gives the water supply system wide latitude in how it chooses to comply with the rule; it does not require the system to incur any costs in the development of this plan, nor does it require publication or distribution of the plan. Therefore, development and maintenance of the plan will result in little or no fiscal impact to a water supply system or its customers.

The adopted amendments resulting from the federal TCR and PNR will have no fiscal impact on the regulated community or its customers. The language of these rules is being amended to more accurately reflect the federal rules. Because the agency's current methods of implementation comply with the federal rules, no changes to state implementation will result from the amend-

ments. The revisions to the PNR are required by EPA to maintain primacy.

Existing §290.113, Disinfection By-products (TTHM and HAA5), contains the standards for disinfection by-products resulting from DBP1 promulgated by the EPA in December 1998. This rule package adopts amendments that would add the requirements of DBP2 promulgated by the EPA in January 2006. Amendments to DBP1 adopted by this rulemaking would change references so that the Chapter 290 rules distinguish between the DBP1 and DBP2 rules. Because these amendments result in no changes in implementation, they will result in no fiscal impact to the regulated community.

This rulemaking does not qualify as a major environmental rule because it will not have an adverse economic effect. Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for treatment of water used in public water systems and is consistent with federal rules; 2) does not exceed the requirements of state law under Texas Health and Safety Code, Chapter 341, Subchapter C; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on treatment of water used in public water systems, but rather is adopted to be consistent with federal rules in order to allow the state to maintain its authority to implement the federal Safe Drinking Water Act, pursuant to the agreements between the EPA and TCEQ; and 4) is not adopted solely under the general powers of the agency, but rather specifically under Texas Health and Safety Code, §341.031, which allows the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act, as well as the other general powers of the agency.

The commission invited public comment of the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments to Chapter 290 and performed an assessment of whether the amendments would constitute a taking under Chapter 2007 of the Texas Government Code. The primary purposes of the adopted amendments are to incorporate federal regulations related to: 1) protecting public drinking water consumers from the risks of disinfectant byproducts more equitably than previous rules in response to the National Primary Drinking Water Regulations: DBP2 published by the EPA in the January 4, 2006 issue of the *Federal Register*; 2) providing increased public health protection from the protozoan *Cryptosporidium* in drinking water in response to the National Primary Drinking Water Regulations: LT2 published by the EPA in the January 5, 2006 issue of the *Federal Register*; and 3) providing greater protection from pathogens for customers of public water systems that operate wells through new monitoring, reporting, and compliance requirements, in response to National Primary Drinking Water Regulations: GWR, published in the November 8, 2006 issue of the *Federal Register*. Additional amendments are adopted to: 1) require by rule certification of public notice in order to gain primacy over the PNR adopted by the TCEQ in 2002; 2) address security issues at public water systems through rulemaking related to policy and response planning in response to Senate Bill 9, 79th Legislature, 2005; 3) update system design requirements to reflect current technology; 4) add requirements for consumer confidence reports relating to the new rules; 5) ensure consistency with the existing federal TCR and DBP1; and 6) correct any typographical errors, formatting mistakes, incorrect references, or citation changes identified through review of the rule language and delete references to compliance initiation dates that have already passed and make other non-substantive changes. The adopted amendments would substantially advance these purposes by amending notice, reporting, and licensing requirements and adding new technology options to Chapter 290, and making non-substantive changes.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). In order to maintain primacy over public drinking water, the state must enact rules no less stringent than the federal drinking water regulations as required by 40 CFR §142.10. Further, Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The adopted rules are designed to ensure that drinking water for public consumption is treated and monitored sufficiently to minimize exposure to waterborne disease. The adopted rules are designed to accomplish this goal without imposing unnecessary burdens.

Promulgation and enforcement of the adopted amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rule because the adopted amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in property value as a result of this rule. The rule requires public drinking water system to comply with drinking water standards protective of human health and the environment and brings those standards in concurrence with those of the corresponding federal regulations. Therefore, the adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing for this rule on August 30, 2007 in Austin, Texas. The public comment period for this rulemaking closed on September 10, 2007. The commission received comments from Austin Water Utility (AWU), Environmental Protection Agency, Region 6 (EPA), International Code Council Texas Field Office (ICCTx), South Tawakoni Water Supply Corporation (STWSC), TCB Incorporated (TCB), and TRA/TCRWSS (TRA).

AWU and TCB generally supported the rule. AWU, EPA, ICCTx, STWSC, TCB, and TRA suggested modifications to the proposed rules to clarify their applicability as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

General

EPA commented that the following sections are consistent with the federal regulations cited (all references are to 30 TAC and 40 CFR:

Section 290.103(2), (6), (10), (18), (25), and (37) is consistent with 40 CFR §141.2; §290.103(2) is also consistent with 40 CFR §141.600(c)(2); §290.112(b)(2)(H) and (c)(5) is consistent with 40 CFR §141.135(a)(3)(ii); §290.113(c)(4)(A) - (C) is consistent with 40 CFR §141.132(b)(1)(iv); §290.114(b) is consistent with 40 CFR §141.64(a); §290.115(b) is consistent with 40 CFR §141.64(b)(2)(i); §290.115(c)(1)(A) is consistent with 40 CFR §141.600(b); §290.115(c)(5)(A) - (C) is consistent with 40 CFR §141.132(b)(1)(iv); §290.115(c)(5)(A) and (B) is consistent with 40 CFR §141.600(d)(1); §290.115(c)(5)(B) is consistent with 40 CFR §141.603(a)(1) - (4); Footnote 1 to Table §290.115(c)(5)(B) is consistent with the footnote to 40 CFR §141.603(a)(1) - (4); §290.115(c)(5)(B)(i) is consistent with 40 CFR §141.603(b)(1); §290.115(c)(5)(B)(ii) is consistent with 40 CFR §141.603(b)(2); §290.115(c)(5)(B)(iii) is consistent with 40 CFR §141.603(b)(3); §290.115(c)(5)(C) and its footnote are consistent with 40 CFR §141.600(c)(1)(i) - (v) and its footnote; §290.115(c)(5)(C)(i)(I) and (II) is consistent with 40 CFR §141.601(a)(1); §290.115(c)(5)(C)(i)(II) is consistent with 40 CFR §141.601(a)(2); Footnote 1 to Table §290.115(c)(5)(C)(ii)(I) is consistent with 40 CFR §141.601(b)(3); §290.115(c)(5)(C)(iii)(I) and (II) is consistent with 40 CFR §141.601(c)(1); §290.115(c)(5)(C)(iii)(III) is consistent with 40 CFR §141.601(c)(2); §290.115(c)(5)(C)(iii)(IV) is consistent with 40 CFR §141.601(c)(3); §290.115(d) is consistent with 40 CFR §141.600(e); §290.115(f)(1)(E) is consistent with 40 CFR §141.600(f); §290.119(b) is consistent with 40 CFR §141.131(d)(3), (4)(i) and (ii), and (6); §290.272(c)(4)(D)(iii) is consistent with 40 CFR §141.153(d)(4)(iv)(B); and, §290.272(e)(7) is consistent with 40 CFR §141.153(d)(4)(iv)(C).

The commission acknowledges the EPA's comments. No changes have been made in response to these comments.

STWSC commented that extreme weather conditions in Texas, like drought, low lake levels, and wet summer conditions could not have been considered when the EPA promulgated the disinfection by-products rule. STWSC understands that the EPA allows a ±15% margin of error in lab testing for disinfection by-products. STWSC requests that especially because of extreme weather conditions all affected surface water entities should be provided at least a 5% compliance operating margin {total trihalomethanes (TTHM) and haloacetic acids-group of five (HAA5)}.

The commission responds that in the preamble to the DBP2 rule published in the January 4, 2006, *Federal Register*, on page 394 through page 408, EPA considered epidemiological studies in which weather was an intrinsic variable impacting disinfection by-product levels and based the maximum contaminant levels (MCLs) for disinfection by-products, in part, on these studies. The federal rules provide maximum contaminant levels (MCLs) for TTHM and HAA5 of 80 and 60 micrograms per liter, respectively, without any compliance operating margin. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. By providing at least a 5% compliance operating margin, the rules would be less stringent than the federal rules. The adopted rules reflect the MCLs for TTHM and HAA5 specified by federal regulations. No changes have been made in response to this comment.

SUBCHAPTER D: RULES AND REGULATIONS.

§290.38. Definitions.

EPA commented that the definitions for "bank filtration", "flowing stream", "lake/reservoir", "membrane filtration", "plant intake", "presedimentation", and "two-stage lime softening" are not contained in §290.38.

The commission responds that under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. Thus the commission must adopt rules that contain the definitions found in the federal rules at 40 CFR §141.2. To include all definitions contained in 40 CFR §141.2 the following statement is contained in §290.38, "If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations (CFR) §141.2." Therefore all of the definitions cited in the comment are adopted by reference in §290.38. No changes were made in response to this comment.

ICCTx commented that the definition of uniform fire code in adopted §290.38(73) should be revised from "Uniform Fire Code--The standards of the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California, 90601-2298." to the "International Fire Code--The standards of the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001."

The commission agrees with this comment and the suggested change has been made. The reference was changed in §290.42(e)(4)(C) from "Uniform Fire Code (UFC)" to "International Fire Code (IFC)" to reference the Fire Code currently adopted in Texas. Additionally, "UFC" is also referenced in §290.42(e)(6). The commission has changed this reference to "IFC."

§290.42. Water Treatment.

AWU commented that §290.42(g)(4) states that a 2-log removal credit is given for bag, cartridge and membrane systems installed before April 1, 2012 however this should be a 3-log removal.

The commission responds that the 3-log removal credit is correct for *Giardia* as specified by 40 CFR §141.70. However, the 2-log removal credit is correct for *Cryptosporidium* as specified by 40 CFR §141.170 and 40 CFR §141.500. The commission amended the rule to clarify that these technologies can receive up to 2-log removal credit for *Cryptosporidium* and 3-log removal credit for *Giardia*.

TCB commented that there is an expanding chasm between monitoring requirements in Subchapter F and the identified technologies' design criteria in Subchapter D. This chasm requires more technologies to be reviewed through the commission's innovative treatment approval process. TCB asked why the explicit design and operational criteria for certain technologies in §290.42(g), Other Treatment Processes, is not in another section related to design criteria or operational criteria.

The commission responds the chasm between monitoring requirements in Subchapter F and the design criteria of Subchapter D exists because the federal rules contain relatively few design criteria but often contain precise monitoring, reporting, and performance criteria. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. The commission's regulatory approach provides systems with design flexibility where the federal rules are not prescriptive. The commission acknowledges that there are many ways to organize the rules. The commission has chosen to include the specific design criteria for unconventional filtration and ultraviolet disinfection, which are taken directly from the federal LT2 rule in 40 CFR §141.719 and 40 CFR §141.120, under §290.42(g). By placing these criteria in §290.42(g) the commission provides a section that consolidates both the federal requirements and other information the system needs to evaluate and select its technology. For example, a system considering membrane technology needs to be aware of site-specific piloting and capacity determination requirements during the planning phase of technology selection. By including design specifics in this subsection, those specifics are organizationally close to the site-specific pilot testing requirements also in this subsection. No change has been made in response to this comment.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

EPA commented that the recordkeeping requirements described in 40 CFR §141.722 could not be located in the proposed rules.

The commission responds that under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. Thus, the commission proposed rules that contain the recording keeping requirements found in the federal rules in 40 CFR §141.722. The recordkeeping requirements for each federal citation are located as follows: 40 CFR §141.722(a) is located in §290.46(f)(3)(b)(vii) and 40 CFR §141.722(b) is located in §290.46(f)(3)(b)(viii). The commission responds that the recordkeeping requirement in 40 CFR §141.722(c), which is located in §290.46(f)(3)(B)(ix) for microbial toolbox sampling results, could be confused with the IFE and CFE turbidity recordkeeping requirements found in §290.46(f)(3)(B)(iv) and (E)(i), respectively, and might not be construed as meeting the requirement of 40 CFR §141.722(c). To remove this confusion, the commission described what turbidity records need to be kept in §290.46(f)(3)(b)(ix) to differentiate the microbial toolbox sampling results from the other turbidity results currently reported to the commission.

EPA commented that monitoring plans must be retained by a public water system for ten years, consistent with 40 CFR §141.33(f).

The commission agrees with this comment and has changed §290.46 to conform with 40 CFR §141.33(f) by moving the requirement for monitoring plans from §290.46(f)(3)(D), which lists records that must be kept for five years, to §290.46(f)(3)(E), which lists records that must be kept for ten years, to be consistent with the federal requirements.

EPA commented that the record retention requirements for IDSE only included IDSE plans whereas it also should have included IDSE reports and other compliance documentation consistent with 40 CFR §141.601(a)(4).

The commission agrees with this comment and has revised §290.46(f)(3)(E)(v) to include the retention time requirements for all IDSE documentation to conform with 40 CFR §141.601(a)(4).

§290.47. Appendices.

SUBCHAPTER F: DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS.

§290.103. Definitions.

TCB commented that new §290.103(6) uses the undefined term "direct connection" and requests asks if the commission intends to expand or limit the definition of consecutive system.

The commission agrees that the use of the term "direct connection" within the definition of "consecutive system" is undefined. The language, which was incorporated from the federal rule, was intended to clarify but not expand or limit the term "consecutive system." In Texas, direct connection has been interpreted to mean "direct pressure connection." As this has the potential to cause confusion, the commission has removed the sentence containing the reference to "direct connection" from this definition. The commission added the phrase "other public water" and removed the word "wholesale." The commission made these changes to explain how systems may be interconnected to meet the definition of "consecutive systems" without using the term "direct connection."

AWU commented that new §290.103(29) does not define operational evaluation level but merely states what is done when the level is exceeded. AWU suggested adding a reference to §290.115(b)(2), which defines the level and how it is calculated.

The commission agrees with this comment and has included the language from §290.115(b)(2).

TCB commented that new §290.103(37), wholesale system, leaves open the question of how to define a water system which may be providing unfinished, raw water as a wholesale provider. TCB suggested that the commission may need to address this in its definitions.

The commission responds that the definition for "wholesale system" incorporated in the commission's proposed rule was from the federal rule. However, the federal rule does not include many requirements that Texas systems must meet, such as disinfection of groundwater. Instead of adopting the federal language, the commission has changed the proposed definition of the term "wholesale system" to accurately reflect how the term is used in Texas.

§290.109. Microbial Contaminants.

TCB commented that new §290.109(b)(1)(A) - (C), appeared to contain an error in the statement "the MCL is achieved when" and suggest that the TCEQ revise this phrase to "the MCL is violated when."

The commission responds that there is not an error with the language "the MCL is achieved when," however, the commission

notes that the word "achieved" can be interpreted many ways. The commission intended for this section to define the MCL. To clearly state the MCL, the commission changed the rule language from "achieved when" to "defined as."

TRA commented that the rule should require a purchased water system to take one additional coliform sample where the system's water supplier connects to the distribution each day that a routine distribution coliform sample is taken. If that additional sample comes back positive, the purchased water system must notify its provider within the 24-hour period so the provider can test its wells. If the provider's results come back negative, the purchased water system will know that the problem lies with its own system and not with the provider's source; thus, the system responsible can begin immediate corrective actions.

The commission responds that under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. If this suggestion were implemented, it would relieve groundwater suppliers of their responsibility under federal rule to take raw fecal indicator samples after a coliform-positive distribution sample in a purchaser's system, which is required under the federal rule. In order to remain as stringent as the federal rules, no change has been made in response to this comment.

TCB commented that §290.109(c)(4) should be made into a separate paragraph (d) to distinguish the distribution monitoring requirements for raw groundwater source monitoring regulations.

The commission disagrees with this comment. The raw water monitoring required under the GWR in 40 CFR §141.402, is additional repeat monitoring performed as a result of routine distribution monitoring, therefore they are intrinsically linked and need to remain in the same subsection. No change has been made in response to this comment.

TCB commented that the requirements for requesting invalidation of a routine distribution coliform positive sample should not be included in the §290.109(d) because they are not related to analytical requirements.

The commission responds that §290.109(d) contains both invalidation and analytical requirements. These are placed together because they are both related to the validity of the sample results. To reduce confusion regarding the contents of the subsection, the commission has modified the catchline from "Analytical requirements for microbial contaminants" to "Analytical and invalidation requirements for microbial contaminants" to more accurately reflect the contents of this subsection.

TCB commented that new §290.109(g)(2) refers to a public groundwater system receiving a valid *E. coli* or other fecal indicator positive source sample. TCB questioned what is "valid" in this sentence. TCB also suggested the commission needs to note what tier violation this is within the paragraph.

The commission agrees that the use of the modifier "valid" is confusing because it is inconsistent with other rule sections, which refer to "sample(s) that (have) not been invalidated." The rule language has been revised to remove the modifier "valid" and to refer instead to a sample "that has not been invalidated" for clarity and consistency. The commission declines to make the suggested change to note the tier violation, however it agrees that the urgency of notification required should be noted within this paragraph, as suggested by the commenter. Incorporating the notice timeframe from §290.122(a) into this paragraph facilitates the issuance of timely public notice because the system will not be required to refer to a different rule section to find the appropriate notice timeframe. Therefore, the rule has been revised to provide that a public groundwater system must notify the water system customers of a positive source sample within 24 hours.

TCB commented that in §290.109(g)(3) there is a typographical error between "*E. coli*" and "present" in the second line.

The commission verified that there was a space between "*E. coli*" and "present." No change has been made in response to this comment.

§290.111. Surface Water Treatment.

AWU commented that during June 2002 through June 2004 it has performed the LT2 rule's Schedule 1 *Cryptosporidium* monitoring and submitted the data to the EPA under the grandfathered provisions of the federal LT2 rule. AWU stated that the EPA indicated by email their acceptance of the data for compliance and that AWU will be in Bin 1 of the treatment requirements. AWU commented that their understanding is that the EPA staff will hand off the compliance data once this rule package is final. AWU commented that it is their understanding that the TCEQ has a Memorandum of Understanding with the EPA addressing early rule implementation however the TCEQ's proposed rule changes do not address LT2 rule compliance process for Schedule 1, 2, and 3 systems. AWU commented that the TCEQ should perform early implementation of the LT2 rule just as the commission has for the Stage 2 rule.

The commission responds that the federal rule explicitly allows grandfathering. As the commission adopts rules as stringent as the federal rules, the commission has adopted by reference the grandfathering provisions in the federal rule, contained in 40 CFR §141.707. The commission will use the data provided to the EPA and accept the EPA's bin classifications assigned by the EPA during its early implementation period. The systems on Schedules 1, 2, and 3 will be classified by the EPA. The commission will classify Schedule 4 and any other systems not classified by the EPA. The commission continues to work closely with the EPA on bin classifications to ensure consistency. EPA is performing the early implementation activities of LT2 for Schedules 1, 2, and 3. No change has been made in response to this comment.

EPA commented that the reporting requirements described in 40 CFR §141.721 could not be located in the proposed rules.

Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. Thus, the commission proposed rules that contain the reporting requirements found in the federal rules in 40 CFR §141.721. The reporting requirements for each federal citation are located as follows: 40 CFR §141.721(a) is located in §290.111(b)(1) - (3), (7)(A), and (c)(4); 40 CFR §141.721(b) and (d) is not applicable because the commission does not allow uncovered finished water storage facilities; 40 CFR §141.721(e) is located in §290.111(d)(2)(B), (h)(2) and (3); and, 40 CFR §141.721(f) is located in §290.111(h)(7) - (9). The commission agrees that the requirement to report bin classification found in 40 CFR §141.721(c) is not explicitly stated in the proposal. To maintain primacy the requirement has been added to §290.111(h)(10) and the subsequent paragraph has been renumbered.

EPA commented that all of the microbial toolbox options found in 40 CFR §141.715 were not explicitly stated in the proposed rules.

The commission responds that the microbial toolbox options of source water protection, combined filter performance, individual filter performance, demonstration of performance, bag or cartridge filters (individual or in series), membrane filtration, second stage filtration, chlorine dioxide, ozone and ultraviolet light and the requirements for their use are explicitly stated in §290.111(c)(6) and (g)(4). Section 290.111(g)(4) specifically allows all other options to be considered by the executive director on a case-by-case basis. The remaining microbial toolbox options were discussed with stakeholders at the October 24, 2006 stakeholders' meeting and according to stakeholder input are not currently being used at PWSs in Texas. The commission is not aware of widespread interest in these other options. The commission's intent is to allow the use of all of the microbial toolbox options provided by EPA, but to only list the requirements for microbial toolbox options that will be used on a widespread basis in Texas. By listing a limited subset, the commission minimized the information in the rules making them easier to navigate. No change has been made in response to this comment.

EPA commented that the *E.coli* level that would require a PWS using groundwater under the direct influence of surface water (GUI) to conduct *Cryptosporidium* testing should be stated in the commission's proposed rules.

Under 40 CFR §141.701(a)(4)(iv) a PWS using GUI sources must sample *Cryptosporidium* if the *E. Coli* levels found are above the limits specified for the nearest water body type. The commission proposed rules that contain the requirement that PWS that use GUI sources sample for *Cryptosporidium* if the *E. coli* levels found are above limits specified for lakes/reservoirs. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. To achieve consistency with the federal rule, the commission changed the language of §290.111(b)(3)(B)(i) and (ii) to add a provision that would allow a system using a GUI source nearest to a river or flowing stream to only have to conduct *Cryptosporidium* sampling if the *E. coli* levels found exceed the levels for a source water intake on a river or flowing stream. This change allows systems using GUI sources all the options available in 40 CFR §141.701(a)(4)(iv)

EPA commented that §290.111(b)(3)(B) and (B)(iii) do not precisely reflect the requirements for sampling of smaller public water systems found in 40 CFR §141.701(a)(3)(i) and (4).

The commission agrees with the EPA's comment that, as written in the proposed language, the requirements are more stringent than the federal rule because they require smaller public water systems to take turbidity samples with the initial *E. coli* samples and to take turbidity and *E. coli* samples in conjunction with *Cryptosporidium* samples. Under the federal rule, 40 CFR §141.701(a)(3)(i) and (4), smaller systems are not required to take these extra samples. The rule has been changed to be consistent with the federal rules by eliminating the turbidity samples during the initial *E. coli* sampling and the turbidity and *E. coli* samples during possible *Cryptosporidium* sampling for smaller public water systems.

AWU commented that the applicable CFR figures and tables should be included to provide for rule consistency and to eliminate ambiguity. AWU specifically noted that new §290.111(b) addresses two rounds of *Cryptosporidium* monitoring, however the timing found in the federal table contained in 40 CFR §141.701(c) is not clearly stated. Similarly, EPA commented that §290.111(b) should include a time table and a statement of when the proposed sampling schedule and locations are due from systems that place new sources into service.

The commission responds that it omitted the raw source water monitoring schedule for several reasons. First, several of the dates on which monitoring must commence have passed. Second, EPA has agreed to conduct early implementation activities for the first round of monitoring for all systems required to begin monitoring before October 1, 2008. And, third, while the federal table contained in 40 CFR §141.701(c) addresses existing sources, it does not address the monitoring schedule for new raw water sources; therefore, the commission proposed to instruct systems as to their monitoring schedules on a case-by-case basis. In response to comments, for the convenience of the regulated community and for consistency, the commission adopts new §290.111(b)(4)(A) to incorporate the table contained in 40 CFR §141.701(c) for existing sources, adopts new §290.111(b)(4)(B) to address the monitoring schedule for new sources, and renumbers the subsequent paragraphs in §290.111(b)(4).

EPA commented that source water replacement sample timing could not be located in the commission's proposed rules.

The commission responds that under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. The commission responds that, in order to maintain primacy, it had proposed rules containing the source water replacement sample timing found in §141.702(b)(2)(ii) in proposed §290.111(b)(5). The rules require certain PWSs to submit replacement samples on a schedule approved by the executive director in §290.111(b)(5). This rule stipulates that "If, for any reason, the laboratory is unable to report a valid analytical result for a scheduled sample, the system must submit a replacement sample on a date approved by the executive director"; thus allowing the executive director to approve an alternative sampling date as specified in §141.702(b)(2)(ii). Because the source water replacement sample timing was included in the proposed rule, no changes were made in response to this comment.

AWU commented that the applicable CFR tables and calculation methods should be included to provide for rule consistency and to eliminate ambiguity. AWU noted that the commissions' proposed LT2 rules, unlike its DBP2 proposal, do not spell out the methods that the executive director would use to determine compliance with LT2 requirements.

The commission did not include the details of how the executive director would ensure compliance with federal requirements because it instead incorporated those details by reference to 40 CFR §141.710. Further, the information contained in 40 CFR §141.713(a), 40 CFR §141.713(c), and 40 CFR §141.713(d) is included in §290.111(c)(3)(B) in a more concise manner. The commission agrees that including additional details would benefit the regulated community and minimize confusion. To clarify the procedures that the executive director will use to determine compliance with bin classification requirements, the commission adopts §290.111(c)(3)(A)(i) -(v), which address the compliance calculations contained in 40 CFR §141.710(b). Similarly, to further explain the compliance timetable for meeting the new

treatment technique requirements, the commission adopts new §290.111(c)(3)(B)(i) - (iii) which address the requirements of 40 CFR §141.713(a) and (c) and the analogous requirements for new raw surface water sources.

AWU commented that the figure §290.111(c)(3)(B) contained incorrect *Cryptosporidium* log removals for the various Bin Classifications.

The commission agrees with this comment regarding the publication error in the *Texas Register*. In response to comment, the commission changed the figure for the following minimum treatment technique requirements: Bin 1 from 22.0-log to 2.0-log; Bin 2 from 44.0-log to 4.0-log; Bin 3 from 55.0-log to 5.0-log; and, Bin 4 from 55.5-log to 5.5-log, as was originally intended by the commission.

AWU stated that the intent of the figure in §290.111(c)(3)(B) was unclear. AWU questioned whether the figure was to stipulate additional removals like the EPA rules are written, or to show the treatment requirements, including the 3-log credit given to the systems with complete treatment, including AWU. The EPA commented that the figure seems to conflict with the requirements of the table in 40 CFR §141.711 because it contains a minimum treatment technique requirement of 2.0-log for systems in Bin 1 where as the federal rule requires no additional treatment for Bin 1 systems.

The commission responds that the figure in §290.111(c)(3)(B) was designed to consolidate a number of federal requirements, including provisions contained in 40 CFR §§141.170(a)(1), 141.500(a), 141.710(a), and 141.711(a). Therefore, the commission's figure does not match the table in 40 CFR §141.711. The figure in §290.111(c)(3)(B) shows the total treatment requirements, including the additional requirements contained in 40 CFR §141.711(a)(1). The federal table does not explicitly address the removal credits assigned to plants using conventional granular media filters. However, by defining the additional removal requirements the EPA implicitly grants plants using coagulation, flocculation, and granular media filters a 2.5-log *Cryptosporidium* removal credit and plants using coagulation, flocculation, clarification, and granular media filters a 3.0-log *Cryptosporidium* removal credit. To address this issue, the commission included in a footnote, an explicit statement of the *Cryptosporidium* removal credits granted by the EPA in 40 CFR §141.711 to various treatment technologies.

EPA noted the Bin 1 treatment technique requirement in the figure seems to conflict with the removal/inactivation requirement contained in §290.111(c)(3)(D).

The commission responds that systems often use a combination of pathogen removal and pathogen inactivation processes to meet the treatment technique requirement. Although the terms "treatment technique" and "removal/inactivation" can be used interchangeably, using both within subsection (c) resulted in the misconception that they represent two different requirements. To avoid confusion, the figure has been revised to replace the heading "Minimum Treatment Technique Requirement" with "Minimum Removal/Inactivation Requirement." The commission chose to use the term "removal/inactivation" to be consistent with the terminology in the remainder of this subsection.

EPA commented that §290.111(g)(1) would allow plants meeting enhanced individual filter effluent (IFE) performance criteria an additional 1.0-log *Cryptosporidium* removal credit and §290.111(g)(2) would allow plants meeting enhanced combined filter effluent (CFE) performance criteria an additional 0.5-log *Cryptosporidium* removal credit. Although the state rules prohibit plants from simultaneously claiming both credits, the EPA commented that the approach may not be as stringent as the approach contained in 40 CFR §141.718(a) and (b). The federal provisions grant a plant an additional 0.5-log removal credit for meeting the enhanced IFE performance criteria and a 0.5-log removal credit for meeting the enhanced CFE performance criteria but grant an additional 1.0-log removal credit only if both criteria are met simultaneously.

The commission responds that on page 698 of the January 5, 2006, *Federal Register*, EPA stated "EPA's intent in both the proposal and today's rule is to award an additional 1.0-log *Cryptosporidium* treatment credit to PWSs that meet the criteria for individual filter performance." Although the adopted federal rule differed from the proposal, EPA stated that "EPA has made this modification so that if a PWS fails in an attempt to achieve individual filter performance credit, the PWS is clearly still eligible to receive combined filter performance credit." Because some Texas systems that are able to meet the enhanced individual filter effluent (IFE) performance criteria may not meet the enhanced combined filter effluent (CFE) performance criteria due to biologically-harmless chemical precipitation, the commission adopts a rule that is consistent with the intent of the current federal rules without requiring that the IFE and CFE performance criteria be met simultaneously. No change has been made in response to this comment.

EPA commented that the proposed §290.111(c)(3)(A) adopts 40 CFR §141.710 by reference. However, the compliance determinations included in §290.111(i) did not include a provision that is analogous to the one contained in 40 CFR §141.710(f).

The commission responds that 40 CFR §141.710(f) provides that failure to report a bin classification is a violation. The commission omitted this specific compliance determination because the executive director will be assigning bin classifications in accordance with the federal requirements. However, to assure that the state rules meet the intent of the federal regulation, the commission added §290.111(i)(6), which provides this violation, and renumbered the subsequent paragraphs in §290.111(i).

§290.112. Total Organic Carbon (TOC).

EPA commented that reduced monitoring requirements for TOC and disinfection by-products were inconsistent with federal regulations of 40 CFR §141.132(b)(1)(iii). The proposed rule did not include the requirement that quarterly TOC samples be collected every 90 days and that monthly TOC samples be collected every 30 days. The commission's regulations do not specify the 30-day and 90-day requirements, but instead are more vague, saying only "monthly" or "quarterly" sampling.

The commission responds that the federal DBP2 rule in 40 CFR §141.132(b)(1)(iii) allows reduced monitoring for systems with low TOC, TTHM, and HAA5 levels. TTHM and HAA5 are disinfection by-products (DBPs). In response to comment, the commission clarified §290.112(c)(2) to show that the term "monthly" explicitly means every 30 days. Similarly, §290.112(c)(2)(A) and (B) were clarified to explicitly state that the requirement for quarterly sampling means every 90 days. Additionally, §290.112(c)(2)(C) was added to contain the new reduced monitoring requirement for systems that have source water TOC less than or equal to 4.0 mg/L, TTHM levels less than 60 micrograms per liter, and HAA5 levels less than 45 micrograms per liter. Related changes for TTHM and HAA5 in

§290.113(c)(4) and §290.115 for reduced monitoring reference the changed requirements of §290.112(c)(2) and (3)(B)(iii).

§290.115. Stage 2 Disinfection By-products (TTHM and HAA5).

EPA commented that §290.115(c)(2) was inconsistent with 40 CFR §141.621(a)(2) because the commission's rules contain a "1" at four locations within its table and the federal table contains a "2" in the corresponding locations.

The commission responds that in its table it contains "1" and references a footnote that contains the situations in which a system is required to sample at two sites. Conversely, the federal table contains a "2" in its table and references a footnote that contains the situations in which a system is required to sample at one site. Although these tables appear different because they are stated conversely, the tables are substantively identical. The commission has changed the "1" to a "1 or 2." However, this change does not make the commission's rule more or less stringent than the current federal DBP2 rule. In the table provided in 40 CFR §141.621(a)(2), the federal DBP2 rule requires surface water systems serving fewer than 500 people and surface water systems serving 500 through 3,300 people to identify two sample sites for long-term stage 2 dual sample set collection. Footnote 2 to EPA's table establishes that these systems may collect an individual TTHM sample and an individual HAA5 sample at the location with highest TTHM and HAA5 concentrations, respectively; if the highest TTHM and HAA5 concentations occur at the same locations, the system may collect a dual sample set at that location. For most small systems in Texas the highest TTHM and HAA5 concentrations will occur at a single location. Therefore, it is clearer to say "1 or 2" sample sites under the heading "Routine Number of Sites" rather than "1" or "2" because either condition may apply. In addition, Footnote 3 to the table in §290.115(c)(2) was restated to clarify the conditions under which either one sample or two samples must be collected.

EPA commented that groundwater systems serving 9,999 or fewer people were incorrectly included in the provision that allows systems to choose a single sample site if HAA5 and TTHM levels are highest at the same location. EPA commented that it intends, in a future rulemaking, to make these systems take dual sample sets at two locations.

The commission responds that in the table provided in 40 CFR §141.621(a)(2), the federal DBP2 rule requires groundwater systems serving fewer than 500 people and groundwater systems serving 500 through 9,999 people to identify two sample sites for long-term Stage 2 dual sample set collection. Footnote 2 to EPA's table establishes that these systems may collect an individual TTHM sample and an individual HAA5 sample at the location with highest TTHM and HAA5 concentrations, respectively. If the highest TTHM and HAA5 concentations occur at the same locations the system may collect a dual sample set at that location. The commission responds that it will change the "1" to a "2" for groundwater systems while still referencing the footnote because the commission cannot adopt a rule based on the future intention of the EPA. In table §290.115(c)(3), the footnote will be referenced to remain consistent with the federal DBP2 rule published January 4, 2006.

EPA commented that the state citation does not reference or include the allowance for reduced TOC monitoring for a system that treats surface water or groundwater under the direct influence of surface water, whereas the federal rule makes this allowance.

The commission responds that when it incorporated the federal language into its rules it included the allowance for reduced TOC monitoring. In response to comment, the commission amended its reference in §290.115(c)(3)(B)(iii) from §290.112 to §290.112(c)(2)(C) to direct the regulated community to the proper location of the provision, which is consistent with 40 CFR §141.132(b)(1)(iii) and §141.623(a).

EPA commented that the state must have the authority to require initial distribution system evaluation (IDSE) sampling under any circumstances, even if the system meets requirements for a Very Small System (VSS) waiver. They further commented that the state must have the authority to require IDSE sampling or a system specific study at new systems, or systems with a change that could impact DBP levels.

The commission responds that in 40 CFR §141.600(d)(2) and §141.604(a) of the federal DBP2 rule, any system may be required by the state to perform IDSE sampling or a system specific study under any circumstances, even if that system meets the criteria for a waiver. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. If the commission's rule did not authorize the executive director to require IDSE sampling under any circumstances, then the state rule would not be as stringent as the federal rules contained in 40 CFR §141.600(d)(2) and §141.604(a). In response to comment, the commission added new §290.115(c)(5)(D) to make conforming changes to match the federal rule. For example, new §290.115(c)(5)(D) establishes that the executive director may require IDSE sampling for systems that are new that have a change in activity status, population or water source consistent with 40 CFR §141.600(d)(2).

EPA commented that with regard to §290.115(c)(5)(B), any operational samples, not just compliance samples, may be used to determine whether a system can be granted a "40/30 waiver" to IDSE sampling.

The commission responds that under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. Under the federal rule if a system has levels over 40 micrograms per liter TTHM and 30 micrograms per liter of HAA5 (40/30) in any type of sample, it will not be granted a IDSE sampling waiver. The state rule only considered compliance samples. The commission did not refer to the term "operational samples" because the term is not defined in the commission's rules. However, the commission has changed §290.115(c)(5)(B) so that it does not limit the type of sample used to determine eligibility for a 40/30 waiver to compliance samples. To be more inclusive, consistent with 40 CFR §141.603(a), the words "compliance samples" were replaced with the word "levels" in §290.115(c)(5)(B). Additionally, consistent with 40 CFR §141.603(a), the word "compliance" was deleted in §290.115(c)(5)(B)(i).

EPA commented that the IDSE plan must include system type and population.

The commission responds that the federal DBP2 rule, in 40 CFR §141.601(a)(3), requires the IDSE plan to include the system type and population. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. If the commission did not require that the IDSE plan include the system type and population, it would not be as strin-

gent as the federal rule. In response to comment, new §290.115 (c)(5)(C)(i)(III) was added to require that the PWS include the system type and population in its IDSE plan.

EPA commented that in Figure §290.115(c)(5)(C)(ii)(I), Number and Types of IDSE Sample Sites, the number of required sample points for surface water systems with fewer than 500 customers was incorrect.

The commission agrees with this comment and has corrected the typographical error by adding the number "1" under the column headed, "Potential High TTHM Locations", consistent with 40 CFR §141.601(b)(1), in response to comment.

EPA commented that §290.115(g)(3) only required systems to provide IDSE plans to their customers, whereas systems are actually required to provide all IDSE documentation.

The commission responds that in the federal DBP2 rule, 40 CFR §§141.33(f), 141.600(c)(4), and 141.603(b)(4), EPA requires that any IDSE documentation be provided to a system's customers upon request. Under 40 CFR §142.10(b), a state must adopt rules no less stringent than the corresponding federal rules in order to maintain primacy over its public drinking water program. If the commission only requires the systems to provide only the IDSE plans and not the other IDSE documents to their customers, the rule would be less stringent than the requirements in 40 CFR §§141.33(f), 141.600(c)(4), and 141.603(b)(4). In response to comment, the reference to subsection (c)(5)(C) was changed to a reference to subsection (c)(5), thus referencing all documentation related to IDSE activities. This new reference now requires systems to provide all IDSE documentation to its customers upon request.

§290.116. Groundwater Corrective Actions and Treatment Techniques.

AWU commented that §290.116(a)(1) appears to be missing its subsection reference at the end of the first sentence. AWU suggested the sentence should read "...in accordance with subsection (c) of this section."

The commission agrees with this comment and the suggested change has been made.

§290.119. Analytical Procedures.

EPA commented that citations related to analytical methods and laboratory certification in §290.119 were not up to date.

The commission agrees with this comment and has updated its references as follows: in §290.119(b)(2), the commission changed a reference from 40 CFR §141.22(a) to §141.74(a)(1); in §290.119(b)(6), the commission added a reference to 40 CFR §141.131(a) for DBP methods; in §290.119(b)(8), the commission added the words "bromide and magnesium", consistent with 40 CFR §141.131(d)(2); and, in §290.119(c) the commission added a reference to 40 CFR §141.151(d), defining the term "detection."

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41, 290.42, 290.44 - 290.47

STATUTORY AUTHORITY

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105, THSC, §341.031, and §341.0315.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Drinking Water Dictionary*, prepared by the American Water Works Association.

(1) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(2) ANSI standards--The standards of the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(3) Approved laboratory--A laboratory certified and approved by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels.

(4) ASME standards--The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

(5) ASTM standards--The standards of the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19102.

(6) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(7) AWWA standards--The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

(8) Bag Filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(9) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(10) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels.

(11) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(12) Chemical disinfectant- Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(13) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(14) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(15) Contamination--The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(16) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(17) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(18) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(19) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(20) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(21) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(22) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(23) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(24) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(25) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(26) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(27) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium;* or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(28) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(29) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(30) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(31) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a)-(f) of this title (relating to Water Treatment). For example, the adjustment of fluoride ion content, special treatment for metals, iron, manganese, organic and inorganic contaminant reduction, special methods for taste and odor control, demineralization, corrosion control processes, membrane filtration, bag/cartridge filters, ozone, chlorine dioxide, Ultraviolet (UV) light disinfection, and other treatment processes.

(32) Interconnection--A physical connection between two public water supply systems.

(33) International Fire Code (IFC)--The standards of the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001.

(34) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(35) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(36) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(37) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as $\log_{10}$ (i.e., $\log_{10}$ (feed concentration) - $\log_{10}$ (filtrate concentration).

(38) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(39) Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(40) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(41) Membrane $LRV_{C\text{-}Test}$--The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of LRVs obtained during challenge testing, with one representative LRV established per module tested.

(42) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(43) Membrane sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test.

(44) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(45) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(46) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(47) National Fire Protection Association (NFPA) standards--The standards of the NFPA, 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

(48) National Sanitation Foundation (NSF)--The NSF or reference to the listings developed by the foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

(49) Noncommunity water system--Any public water system which is not a community system.

(50) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(51) Nontransient noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(52) psi--Pounds per square inch.

(53) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(54) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(55) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(56) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(57) Potable water service line--The section of pipe between the potable water main to the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(58) Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(59) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(60) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(61) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(62) Public health engineering practices--Requirements in this subchapter or guidelines promulgated by the executive director.

(63) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes; any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(64) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test (NDPT) established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value (LRV) demonstrated during challenge testing.

(65) Reactor Validation Testing--A process by which a full-scale UV reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(66) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(67) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding.

(68) Sanitary survey--An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(69) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(70) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(71) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(72) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(73) Transient noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

(74) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(75) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

§290.42. Water Treatment.

(a) Capacity and location.

(1) Based on current acceptable design standards, the total capacity of the public water system's treatment facilities must always be greater than its anticipated maximum daily demand.

(2) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the groundwater water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage unit shall be constructed of ductile iron or polyvinyl chloride (PVC) pipe with a minimum pressure rating of 150 pounds per square inch (psi) and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes, including both liquid and solid waste or by-product material from operation and/or maintenance.

(3) Each water treatment plant shall be located at a site that is accessible by an all-weather road.

(b) Groundwater.

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section.

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(11) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that these metals can be sequestered so that the discoloration problems they cause do not exist in the distribution system.

(C) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(3) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(4) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(5) All plant piping shall be constructed to minimize leakage.

(6) All groundwater systems shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(7) Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(8) The executive director may require 4-log removal or inactivation of viruses based on raw water sampling results required by §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate an impermeable strata or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title (relating to Surface Water Treatment).

(A) Filters provided for turbidity and microbiological quality control shall conform to the requirements of subsection (d)(11) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as for checking the effectiveness of disinfection or any other treatment processes employed.

(4) All plant piping shall be constructed to minimize leakage. No cross-connection or interconnection shall be permitted to exist between a conduit carrying potable water and another conduit carrying raw water or water in a prior stage of treatment.

(5) All systems using springs and other water sources shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(6) Return of the decanted water or sludge to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process and shall conform to the applicable requirements of subsection (d)(3) of this section. Systems that do not comply with the provisions of subsection (d)(3) of this section commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notice).

(7) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title.

(2) All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

(A) Vacuum breakers must be provided on each hose bibb within the plant facility.

(B) No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(C) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(D) Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clearwells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(E) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(F) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(3) Return of the decanted water or solids to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process. Systems that do not comply with the provisions of this paragraph commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notice).

(A) Unless the executive director has approved an alternate recycling location, spent backwash water and the liquids from sludge settling lagoons, spent backwash water tanks, sludge thickeners, and similar dewatering facilities shall be returned to the raw waterline upstream of the raw water sample tap and coagulant feed point. The blended recycled liquids shall pass through all of the major unit processes at the plant.

(B) Recycle facilities shall be designed to minimize the magnitude and impact of hydraulic surges that occur during the recycling process.

(C) Solids produced by dewatering facilities such as sludge lagoons, sludge thickeners, centrifuges, mechanical presses, and similar devices shall not be returned to the treatment plant without the prior approval of the executive director.

(4) Reservoirs for pretreatment or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidities or other abnormal raw water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Flow measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(6) Chemical storage facilities shall comply with applicable requirements in subsection (f)(1) of this section.

(7) Chemical feed facilities shall comply with the applicable requirements in subsection (f)(2) of this section.

(8) Flash mixing equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least one hydraulic mixing unit or at least two sets of mechanical flash mixing equipment designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant mechanical flash mixing equipment.

(B) Flash mixing equipment shall have sufficient flexibility to ensure adequate dispersion and mixing of coagulants and other chemicals under varying raw water characteristics and raw water flow rates.

(9) Flocculation equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sets of flocculation equipment which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant flocculation equipment.

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and up-flow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000 are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 nephelometric turbidity unit (NTU) and the treatment plant meets with turbidity requirements of §290.111 of this title (relating to Surface Water Treatment).

(ii) The mixing intensity in multiple-stage flocculators shall decrease as the coagulated water passes from one stage to the next.

(C) Coagulated water or water from flocculators shall flow to sedimentation basins in such a manner as to prevent destruction of floc. Piping, flumes, and troughs shall be designed to provide a flow velocity of 0.5 to 1.5 feet per second. Gates, ports, and valves shall be designed at a maximum flow velocity of 4.0 feet per second in the transfer of water between units.

(10) Clarification facilities shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sedimentation basins or clarification units which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant sedimentation basins or clarification units.

(B) The inlet and outlet of clarification facilities shall be designed to prevent short-circuiting of flow or the destruction of floc.

(C) Clarification facilities shall be designed to remove flocculated particles effectively.

(i) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of coagulated waters shall provide either a theoretical detention time of at least six hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 0.6 gallons per minute per square foot of surface area in the sedimentation chamber.

(ii) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of softened waters shall pro-

vide either a theoretical detention time of at least 4.5 hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot of surface area in the sedimentation chamber.

(iii) When operated at their design capacity, sludge-blanket and solids-recirculation clarifiers shall provide either a theoretical detention time of at least two hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot in the settling chamber.

(iv) A side wall water depth of at least 12 feet shall be provided in clarification basins that are not equipped with mechanical sludge removal facilities.

(v) The effective length of a straight-flow sedimentation basin shall be at least twice its effective width.

(D) Clarification facilities shall be designed to prevent the accumulation of settled solids.

(i) At treatment plants with a single clarification basin, facilities shall be provided to drain the basin within six hours. In the event that the plant site topography is such that gravity draining cannot be realized, a permanently installed electric-powered pump station shall be provided to dewater the basin. Public water systems with other potable water sources that can meet the system's average daily demand are exempt from this requirement.

(ii) Facilities for sludge removal shall be provided by mechanical means or by hopper-bottomed basins with valves capable of complete draining of the units.

(11) Gravity or pressure type filters shall be provided.

(A) The use of pressure filters shall be limited to installations with a treatment capacity of less than 0.50 million gallons per day.

(B) Filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times.

(i) The design capacity of gravity rapid sand filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 3.0 gallons per square foot per minute is allowed.

(ii) Where high-rate gravity filters are used, the design capacity shall not exceed a maximum filtration rate of 5.0 gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 6.5 gallons per square foot per minute is allowed.

(iii) The design capacity of pressure filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute with the largest filter off-line.

(iv) Except as provided in clause (vi) of this subparagraph, any surface water treatment plant that provides, or is being designed to provide, less than 7.5 million gallons per day must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with all filters on-line.

(v) Any surface water treatment plant that provides, or is being designed to provide, 7.5 million gallons per day or more must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(vi) Any surface water treatment plant that uses pressure filters must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(C) The depth and condition of the media and support material shall be sufficient to provide effective filtration.

(i) The filtering material shall conform to American Water Works Association (AWWA) standards and be free from clay, dirt, organic matter, and other impurities.

(ii) The grain size distribution of the filtering material shall be as prescribed by AWWA standards.

(iii) The depth of filter sand, anthracite, granular activated carbon, or other filtering materials shall be 24 inches or greater and provide an L/d ratio of at least 1,000.

(I) Rapid sand filters typically contain a minimum of eight inches of fine sand with an effective size of 0.35 to 0.45 millimeter (mm), eight inches of medium sand with an effective size of 0.45 to 0.55 mm, and eight inches of coarse sand with an effective size of 0.55 to 0.65 mm. The uniformity coefficient of each size range should not exceed 1.6.

(II) High-rate dual media filters typically contain a minimum of 12 inches of sand with an effective size of 0.45 to 0.55 mm and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each material should not exceed 1.6.

(III) High-rate multi-media filters typically contain a minimum of three inches of garnet media with an effective size of 0.2 to 0.3 mm, nine inches of sand with an effective size of 0.5 to 0.6 mm, and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each size range should not exceed 1.6.

(IV) High-rate mono-media anthracite or granular activated carbon filters typically contain a minimum of 48 inches of anthracite or granular activated carbon with an effective size of 1.0 to 1.2 mm. The uniformity coefficient of each size range should not exceed 1.6.

(iv) Under the filtering material, at least 12 inches of support gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on an individual basis.

(D) The filter shall be provided with facilities to regulate the filtration rate.

(i) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

(ii) Each declining rate filter shall be equipped with a rate-of-flow limiting device or an adjustable flow control valve with a rate-of-flow indicator.

(iii) The effluent line of each filter installed after January 1, 1996, must be equipped with a slow opening valve or another means of automatically preventing flow surges when the filter begins operation.

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed to provide the ability to measure and record turbidity as required by §290.111 of this title.

(i) Each filter shall be equipped with a sampling tap so that the effluent turbidity of the filter can be individually monitored.

(ii) Each filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals. The executive director may allow combined filter effluent monitoring in lieu of individual filter effluent monitoring under the following conditions:

(I) The public water system has only two filters that were installed prior to October 1, 2000 and were never equipped with individual on-line turbidimeters and recorders; and

(II) The plant is equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity level of the combined filter effluent at a location prior to clearwell storage at 15-minute intervals.

(iii) Each filter operated by a public water system that serves at least 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals.

(iv) Each filter installed after October 1, 2000 shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(v) Each filter unit that is not equipped with an on-line turbidimeter and recorder shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators.

(F) Filters shall be designed to ensure adequate cleaning during the backwash cycle.

(i) Only filtered water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks, by the effluent of other filters, or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by a rate-of-flow controller or flow control valve.

(iii) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 gallons per minute per square foot) and usually not more than 35 inches vertical rise per minute (21.8 gallons per minute per square foot).

(iv) The backwash facilities shall be capable of expanding the filtering bed during the backwash cycle.

(I) For facilities equipped with air scour, the backwash facilities shall be capable of expanding the filtering bed at least 15% during the backwash cycle.

(II) For mixed-media filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 25% during the backwash cycle.

(III) For mono-media sand filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 40% during the backwash cycle.

(v) The filter freeboard in inches shall exceed the wash rate in inches of vertical rise per minute.

(vi) When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow assembly in the supply line. If an atmospheric vacuum breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

(vii) Gravity filters installed after January 1, 1996 shall be equipped with air scour backwash or surface wash facilities.

(G) Each filter installed after October 1, 2000 shall be equipped with facilities that allow the filter to be completely drained without removing other filters from service.

(12) Pipe galleries shall provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(13) The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals.

(A) A plant that is built or repainted after October 1, 2000 must use the following color code. The color code to be used in labeling pipes is as follows:
Figure: 30 TAC §290.42(d)(13)(A) (No change.)

(B) A plant that was repainted before October 1, 2000 may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

(C) The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

(14) All surface water treatment plants shall provide sampling taps for raw, settled, individual filter effluent, and clearwell discharge. Additional sampling taps shall be provided as appropriate to monitor specific treatment processes.

(15) An adequately equipped laboratory shall be available locally so that daily microbiological and chemical tests can be conducted.

(A) For plants serving 25,000 persons or more, the local laboratory used to conduct the required daily microbiological analyses must be certified by the executive director to conduct coliform analyses.

(B) For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted if the required microbiological samples can be submitted to a laboratory certified by the executive director on a timely basis.

(C) All surface water treatment plants shall be provided with equipment for making at least the following determinations:

(i) pH;

(ii) temperature;

(iii) disinfectant residual;

(iv) alkalinity;

(v) turbidity;

(vi) jar tests for determining the optimum coagulant dose; and

(vii) other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes.

(D) An amperometric titrator with platinum-platinum electrodes shall be provided at all surface water treatment plants that use chlorine dioxide.

(E) Each surface water treatment plant that uses sludge-blanket clarifiers shall be equipped with facilities to monitor the depth of the sludge blanket.

(F) Each surface water treatment plant that uses solids-recirculation clarifiers shall be equipped with facilities to monitor the solids concentration in the slurry.

(16) Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff during routine and special investigations.

(e) Disinfection.

(1) All water obtained from surface sources or groundwater sources that are under the direct influence of surface water must be disinfected in a manner consistent with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) All groundwater must be disinfected prior to distribution. The point of application must be ahead of the water storage tank(s) if storage is provided prior to distribution. Permission to use alternate disinfectant application points must be obtained in writing from the executive director.

(3) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the flow rate of the water being treated shall be provided at plants where the treatment rate varies automatically and at all plants where the treatment rate varies more than 50% above or below the average flow. Manual control shall be permissible at surface water treatment plants or plants treating groundwater under the direct influence of surface water only if an operator is always on hand to make adjustments promptly.

(C) All disinfecting equipment in surface water treatment plants shall include at least one functional standby unit of each capacity for ensuring uninterrupted operation. Common standby units are permissible but, generally, more than one standby unit must be provided because of the differences in feed rates or the physical state in which the disinfectants are being fed (solid, liquid, or gas).

(D) Facilities shall be provided for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only a clear supernatant liquid is transferred to the hypochlorinator container.

(F) Provisions shall be made for both pretreatment disinfection and post-disinfection in all surface water treatment plants. Additional application points shall be installed if they are required to adequately control the quality of the treated water.

(G) The use of disinfectants other than chlorine will be considered on a case-by-case basis under the exception guidelines of §290.39(l) of this title (relating to General Provisions).

(4) Systems that use chlorine gas must ensure that the risks associated with its use are limited as follows.

(A) When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency.

(B) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandalism.

(C) Adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC) .

(5) Hypochlorination solution containers and pumps must be housed in a secure enclosure to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered to prevent the entrance of dust, insects, and other contaminants.

(6) Where anhydrous ammonia feed equipment is utilized, it must be housed in a separate enclosure equipped with both high and low level ventilation to the outside atmosphere. The enclosure must be provided with forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the floor vent and discharges through the top vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current IFC .

(f) Surface water treatment plant chemical storage and feed facilities.

(1) Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping.

(A) Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level (MCL) requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability.

(B) Day tanks shall be provided to minimize the possibility of severely overfeeding liquid chemicals. Day tanks will not be

required if adequate process control instrumentation and procedures are employed to prevent chemical overfeed incidents.

(C) Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank.

(D) Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

(E) Bulk storage facilities and day tanks must be designed to minimize the possibility of leaks and spills.

(i) The materials used to construct bulk storage and day tanks must be compatible with the chemicals being stored and resistant to corrosion.

(ii) Except as provided in this clause, adequate containment facilities shall be provided for all liquid chemical storage tanks.

(I) Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(II) Common containment for multiple containers that are not interconnected must be large enough to hold the volume of the largest container with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(III) The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(IV) Incompatible chemicals shall not be stored within the same containment structure.

(V) No containment facilities are required for hypochlorite solution containers that have a capacity of 35 gallons or less.

(VI) On a site-specific basis, the executive director may approve the use of double-walled tanks in lieu of separate containment facilities.

(F) Chemical transfer pumps and control systems must be designed to minimize the possibility of leaks and spills.

(G) Piping, pumps, and valves used for chemical storage and transfer must be compatible with the chemical being fed.

(2) Chemical feed and metering facilities shall be designed so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality.

(A) Each chemical feeder that is needed to comply with a treatment technique or MCL requirement shall have a standby or reserve unit. Common standby feeders are permissible, but generally, more than one standby feeder must be provided due to the incompatibility of chemicals or the state in which they are being fed (solid, liquid, or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection.

(g) Other treatment processes. Innovative/alternate treatment processes will be considered on an individual basis, in accordance with §290.39(l) of this title. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require a pilot study protocol to be submitted for review and approval prior to conducting a pilot study to verify compliance with the requirements of §290.39(l) of this title and Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). The executive director may require proof of a one-year manufacturer's performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(1) Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.

(2) Bag and cartridge filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in subparagraphs (A) - (C) of this paragraph.

(A) The filter system must treat the entire plant flow.

(B) To be eligible for this credit, systems must receive approval from the executive director based on the results of challenge

testing that is conducted according to the criteria established by 40 CFR §141.719 (a) and the executive director.

(i) A factor of safety equal to 1.0-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium* and *Giardia*.

(iii) Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iv) Systems may use results from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(v) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, additional challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and results submitted to the executive director for approval.

(C) Pilot studies must be conducted using filters that will meet the requirements of this section.

(3) Membrane filtration systems or modules installed or replaced after April 1, 2012 and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit for membrane filtration if the systems or modules meet the criteria in subparagraphs (A) - (F) of this paragraph.

(A) The membrane module used by the system must undergo challenge testing to evaluate removal efficiency. Challenge testing must be conducted according to the criteria established by 40 CFR §141.719(b)(2) and the executive director.

(i) All membrane module challenge test protocols and results, the protocol for calculating the representative Log Removal Value (LRV) for each membrane module, the removal efficiency, calculated results of $LRV_{C\text{-}Test}$, and the non-destructive performance test with its Quality Control Release Value (QCRV) must be submitted to the executive director for review and approval prior to beginning a membrane filtration pilot study at a public water system.

(ii) Challenge testing must be conducted on either a full-scale membrane module identical in material and construction to the membrane modules to be used in the system's treatment facility, or a smaller-scale membrane module identical in material and similar in construction to the full-scale module if approved by the executive director.

(iii) Systems may use data from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(iv) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane product line or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of the modified membrane and determine a new QCRV for the modified membrane must be conducted and results submitted to the executive director for approval.

(B) The membrane system must be designed to conduct and record the results of direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration system approved by the executive director and meets the requirements in clauses (i)- (ii) of this subparagraph.

(i) The design must provide for direct integrity testing of each membrane unit.

(ii) The design must provide direct integrity testing that has a resolution of 3 micrometers or less.

(iii) The design must provide direct integrity testing with a sensitivity sufficient to verify the log removal credit approved by the executive director. Sensitivity is determined by the criteria in 40 CFR §141.719(b)(3)(iii).

(iv) The executive director may reduce the direct integrity testing requirements for membrane units.

(C) The membrane system must be designed to conduct and record continuous indirect integrity monitoring on each membrane unit. The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(D) The level of removal credit approved by the executive director shall not exceed the lower of:

(i) the removal efficiency demonstrated during challenge testing conducted under the conditions in §290.42(g)(3)(A) of this title, or

(ii) the maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in §290.42(g)(3)(B) of this title.

(E) Pilot studies must be conducted using membrane modules that will meet the requirements of this section.

(F) Membrane systems must be designed so that membrane units' feed water, filtrate, backwash supply, waste and chemical cleaning piping shall have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation. This may be accomplished by the installation of a double block and bleed valving arrangement, a removable spool system or other alternative methods approved by the executive director.

(4) Bag, cartridge or membrane filtration systems or modules installed or replaced before April 1, 2012 and used for microbiological treatment, can receive up to a 2.0-log removal credit for *Cryptosporidium* and up to a 3.0-log removal credit for *Giardia* based on site specific pilot study results, design, operation, and reporting requirements.

(5) Ultraviolet (UV) light reactors used for microbiological inactivation can receive *Cryptosporidium*, *Giardia* and virus inactivation credit if the reactors meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) UV light reactors can receive inactivation credit only if they are located after filtration.

(B) In lieu of a pilot study, the UV light reactors must undergo validation testing to determine the operating conditions under which a UV reactor delivers the required UV dose. Validation testing must be conducted according to the criteria established by 40 CFR §141.720(d)(2) and the executive director.

(i) The validation study must include the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping or channel configuration of the UV reactor; lamp and sensor locations; and other parameters determined by the executive director.

(ii) Validation testing must be conducted on a full-scale reactor that is essentially identical to the UV reactor(s) to be used by the system and using waters that are essentially identical in quality to the water to be treated by the UV reactor.

(C) The UV light reactor systems must be designed to monitor and record parameters to verify the UV reactors operation within the validated conditions approved by the executive director. The UV light reactor must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the executive director.

(h) Sanitary facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(i) Permits for waste discharges. Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary.

(j) Treatment chemicals and media. All chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

(k) Safety.

(1) Safety equipment for all chemicals used in water treatment shall meet applicable standards established by the OSHA or Texas Hazard Communication Act, Texas Health and Safety Code, Title 6, Chapter 502.

(2) Systems must comply with United States Environmental Protection Agency (EPA) requirements for Risk Management Plans.

(l) Plant operations manual. A thorough plant operations manual must be compiled and kept up-to-date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency.

(m) Security. Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state. Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to a certified laboratory. (A list of the certified laboratories can be obtained by contacting the executive director).

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that feed ammonia.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.

(1) Transient noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration (OSHA) or the Texas Hazard Communications Act, Texas Health and Safety Code, Title 6, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct

supervision of a licensed operator who has a Class "C" or higher license.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must employ an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must employ an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must employ an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must employ at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must employ an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must employ at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must employ at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also employs an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(B) Surface water systems that serve more than 1,000 connections must employ at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. Water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water treated each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities; and

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title (relating to Surface Water Treatment);

(v) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(vi) the records of backflow prevention device programs;

(vii) the raw surface water monitoring results must be retained for three years after bin classification required by §290.111 of this title;

(viii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring; and

(ix) except for those specified in clause (iv) of this subparagraph and subparagraph (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants; and

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections as required by subsection (m)(2) of this section for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample;

(vi) notification to wholesale system(s) of a distribution coliform positive sample for consecutive systems using groundwater; and

(vii) Consumer Confidence Report compliance documentation.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title; and

(ix) any monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans).

(F) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the certified water works operator.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to a laboratory approved by the executive director. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted. See §290.47(b) of this title (relating to Appendices). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in §290.47(d) of this title (relating to Appendices) must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(i) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title (relating to Disinfectant Residuals).

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in

a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on water system ownership and management. The agency shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the executive director. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Utility Regulations). Those systems not subject to Chapter 291 of this title shall notify the executive director of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed in this paragraph and the system's public drinking water supply identification number, and any other information necessary to identify the transaction shall be provided to the executive director 120 days before the date of the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a written list of all the operators and operating companies that the public water system employs. The notice shall contain the name, license number, and license class of each employed operator and the name and registration number of each employed operating company. See §290.47(g) of this title (relating to Appendices).

(q) Special precautions. Special precautions must be instituted by the water system owner or responsible official in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain *E. coli* or fecal coliform organisms, failure to maintain adequate chlorine residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised.

(1) Boil water notifications must be issued to the customers within 24 hours using the prescribed notification format as specified in §290.47(e) of this title (relating to Appendices). A copy of this notice shall be provided to the executive director. Bilingual notification may be appropriate based upon local demographics. Once the boil water notification is no longer in effect, the customers must be notified in a manner similar to the original notice.

(2) The flowchart found in §290.47(h) of this title shall be used to determine if a boil water notification must be issued in the event of a loss of distribution system pressure. If a boil water notice is issued under this section, it shall remain in effect until water distribution pressures in excess of 20 psi can consistently be maintained, a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(3) A boil water notification shall be issued if the turbidity of the finished water produced by a surface water treatment plant exceeds 5.0 NTU. The boil water notice shall remain in effect until the water entering the distribution system has a turbidity level below 1.0 NTU, the distribution system has been thoroughly flushed, a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(4) Other protective measures may be required at the discretion of the executive director.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow measuring devices and rate-of-flow controllers that are required by §290.42(d) of this title shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturers specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturers specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 30 days using chlorine solutions of known concentrations.

(ii) Continuous disinfectant residual analyzers shall be calibrated at least once every 90 days using chlorine solutions of known concentrations.

(iii) The calibration of continuous disinfectant residual analyzers shall be checked at least once each month with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop amperometric, spectrophotometric, or titration method.

(D) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the Ultraviolet Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(E) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 Texas Administrative Code (TAC) Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.101 - 290.104, 290.106 - 290.119, 290.121, 290.122

STATUTORY AUTHORITY

These amendments and new sections are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendments and new sections implement TWC, §§5.102, 5.103, 5.105, THSC, §341.031, and §341.0315.

§290.103. Definitions.

The following definitions shall apply in the interpretation and enforcement of this subchapter. If a word or term used in this subchapter is not contained in the following list, its definition shall be as shown in §290.38 of this title (relating to Definitions) or in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

(1) Assessment source monitoring--Raw groundwater source monitoring required by the executive director based on groundwater source susceptibility to fecal contaminants.

(2) Combined distribution system (CDS)--The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(A) The executive director may determine that the CDS does not include certain systems based on factors such as providing or receiving a relatively small amount of water or only on an emergency basis.

(B) A public water system may be determined to be in a different CDS for the purposes of compliance with regulations based on the Stage 2 Disinfection Byproducts Rule (DBP2) and the Long Term Stage 2 Enhanced Surface Water Treatment Rule (LT2).

(i) For the purposes of raw water monitoring under LT2, the CDS shall be based on the retail and wholesale population served by each surface water treatment plant or plant treating groundwater under the direct influence of surface water.

(ii) For the purposes of DBP2, the CDS shall be determined based on the retail population served within each individual system's distribution system.

(3) Compliance cycle--The nine-year (calendar year) cycle during which public water systems must monitor. Each compliance cycle consists of three, three-year compliance periods. The first compliance cycle begins January 1, 1993, and ends December 31, 2001. The second begins January 1, 2002, and ends December 31, 2010. The third begins January 1, 2011, and ends December 31, 2019. The cycle continues thereafter in a similar pattern.

(4) Compliance period--A three-year (calendar year) period within a compliance cycle. Each compliance cycle has three, three-year compliance periods. Within the first compliance cycle, the first compliance period is called the initial compliance period and runs from January 1, 1993, to December 31, 1995. The second period from January 1, 1996, to December 31, 1998. The third period from January 1, 1999, to December 31, 2001. Compliance periods in subsequent compliance cycles follow the same pattern.

(5) Comprehensive performance evaluation (CPE)--A thorough review and analysis of a treatment plant's performance-based capabilities and the associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and to emphasize approaches that can be implemented without significant capital improvements. The comprehensive performance evaluation consists of the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(6) Consecutive system--A public water system that receives some or all of its finished water from one or more other public water systems.

(7) Disinfection profile--A summary of daily *Cryptosporidium*, *Giardia lamblia* and viral inactivation obtained through disinfection at the treatment plant.

(8) Disinfection by-products (DBP)--Chemical compounds formed by the reaction of a disinfectant with the natural organic matter present in water.

(9) DPD--Abbreviation for N,N-diethyl-p-phenylenediamine, a reagent used in the determination of several residuals. DPD methods are available for both volumetric (titration) and colorimetric determinations, and are commonly used in the field as part of a colorimetric test kit.

(10) Dual sample set--A set of two samples collected at the same time and same location, with one sample analyzed for total trihalomethanes (TTHM) and the other sample analyzed for haloacetic acids-group of five (HAA5). Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation and determining compliance with the TTHM and HAA5 maximum contaminant levels.

(11) Enhanced coagulation--The removal of disinfection by-product precursors to a specified level by conventional coagulation and sedimentation.

(12) Enhanced softening--The removal of disinfection by-product precursors to a specified level by softening.

(13) Entry point--Any point where a source of treated water first enters the distribution system. Entry points to the distribution system may include points where chlorinated well water, treated surface water, rechlorinated water from storage, or water purchased from another supplier enters the distribution system.

(14) Entry point sampling site--A sampling site representing the quality of the water entering the distribution system at each designated entry point.

(15) Fecal indicators--Microbiological organisms used to indicate the presence of fecal contamination. Examples include; fecal coliform, *E. coli*, enterococci, and coliphage.

(16) Filter assessment--An in-depth evaluation of an individual filter, including the analysis of historical filtered water turbidity from the filter, development of a filter profile, evaluation of media condition, identification and prioritization of factors limiting filter performance, appraisal of the applicability of corrections, and preparation of a filter self-assessment report.

(17) Filter profile--A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run. The filter profile must include all the data collected from the time that the filter placed into service until the time that the backwash cycle is complete and the filter is restarted. The filter profile must also include data collected as another filter is being backwashed.

(18) Finished water--Water that is introduced into the distribution system of a public water system and intended for distribution and consumption without further treatment, except as necessary to maintain water quality within the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

(19) Groundwater corrective action--Action required when a raw groundwater source sample is found to be positive for *E. coli* or other fecal indicators as described under §290.116(b) of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(20) Groundwater corrective action plan--A plan approved by the executive director documenting the steps to be taken to address fecal contamination of a groundwater source as described under §290.116(b) of this title. The groundwater corrective action plan must be approved within 30 of being notified of the fecal contamination.

(21) Groundwater system--For the purposes of compliance with §290.109 of this title (relating to Microbial Contaminants) and with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques), a public water system that provides, uses, or distributes any groundwater except if the groundwater is combined with surface water (or with groundwater under the direct influence of surface water) prior to treatment.

(22) Haloacetic acids (five) (HAA5)--The sum of the monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid concentrations in milligrams per liter, rounded to two significant figures after adding the sum.

(23) Halogen--One of the chemical elements chlorine, bromine, or iodine.

(24) Hydrogeologic sensitivity assessment--A determination of whether groundwater systems obtain water from hydrogeologically sensitive sources.

(25) Locational running annual average (LRAA)--The average of analytical results for samples taken at a specific monitoring location during the previous four calendar quarters.

(26) Maximum contaminant level (MCL)--The maximum concentration of a regulated contaminant that is allowed in drinking water before the public water system is cited for a violation. Maximum contaminant levels for regulated contaminants are defined in the applicable sections of this subchapter.

(27) Maximum residual disinfectant level (MRDL)--The disinfectant concentration that may not be exceeded in the distribution system. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants.

(28) Minimum acceptable disinfectant residual--The lowest disinfectant concentration allowed in the distribution system for microbial control.

(29) Operational evaluation level (OEL)--Calculated level of TTHM or HAA5, an exceedance of which requires a system to perform an evaluation of factors in the distribution system contributing to disinfection by-product formation and submit an operation evaluation report as described in §290.115(e)(2) of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)). The OEL at any monitoring location is the sum of the two previous quarters' results plus twice the current quarter's result, divided by 4 to determine an average.

(30) Raw water--Water prior to any treatment including disinfection that is intended to be used, after treatment, as drinking water.

(A) Raw groundwater is water from a groundwater source.

(B) Raw surface water is any water from a surface water source or from a groundwater under the direct influence of surface water source.

(31) Raw groundwater source sampling--Fecal indicator sampling at untreated groundwater sources including triggered source water and assessment source monitoring.

(32) Specific ultraviolet absorption at 254 nanometers (nm) (SUVA)--An indirect indicator of whether the organic carbon in water is humic or non-humic. It is calculated by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV254) (in inverse meters) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(33) Total organic carbon (TOC)--The concentration of total organic carbon, in milligrams per liter, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures. TOC is a surrogate measure for precursors to formation of disinfection by-products.

(34) Total trihalomethanes (TTHM)--The sum of the chloroform, dibromochloromethane, bromodichloromethane, and bromoform concentrations in milligrams per liter, rounded to two significant figures after summing.

(35) Triggered source water monitoring--Raw groundwater source monitoring required for systems not providing at least 4-log treatment of viruses when a routine distribution coliform sample is positive.

(36) Trihalomethane (THM)--One of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(37) Wholesale system--A public water system that delivers water to another public water system.

§290.109. Microbial Contaminants.

(a) Applicability. All public water systems must produce and distribute water that meets the provisions of this section regarding microbial contaminants.

(b) Maximum contaminant levels (MCL) for microbial contaminants. Treatment techniques and MCL requirements for microbial contaminants are based on detection of those contaminants or fecal indicator organisms.

(1) The MCL for microbial contaminants in the distribution system is based on the presence of total or fecal coliform bacteria in routine, repeat, and increased monitoring distribution samples.

(A) For a system which collects at least 40 routine distribution samples per month, the MCL is defined as when more than 5.0% of samples collected in a month are coliform positive.

(B) For a system which collects fewer than 40 routine distribution samples per month, the MCL is defined as when more than one sample is coliform positive.

(C) The acute MCL is defined as when a repeat sample is fecal coliform or *E. coli* positive; or a total coliform positive repeat sample follows a fecal coliform or *E. coli* positive routine sample.

(2) For systems required to collect raw groundwater samples, the standard is no detection of fecal indicators in a raw groundwater samples.

(c) Monitoring requirements for microbial contaminants. Public water systems shall collect samples for total coliform, fecal coliform, *E. coli* , or other fecal indicator organisms at locations and frequency as directed by the executive director. All compliance samples must be collected during normal operating conditions.

(1) Routine microbial sampling locations. Public water systems shall routinely monitor for microbial contaminants at the following locations.

(A) Public water systems must collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system. Other sampling sites may be used if located adjacent to active service connections.

(B) Public water systems shall collect distribution coliform samples at locations specified in the system's monitoring plan.

(2) Routine distribution coliform sampling frequency. Public water systems must sample for distribution coliform at the following frequency:

(A) Community and noncommunity public water systems must collect routine distribution coliform samples at a frequency based on the population served by the system.

(i) the population for noncommunity systems will be based on the maximum number of persons served on any given day during the month;

(ii) the population of community systems will be based on the data reported during the most recent sanitary survey of the public water system; and

(iii) the minimum sampling frequency for public water systems is shown in the following table.
Figure: 30 TAC §290.109(c)(2)(A)(iii) (No change.)

(B) A public water system which uses surface water or groundwater under the direct influence of surface water must collect routine distribution coliform samples at regular time intervals throughout the month.

(C) A public water system which uses only uses only purchased water or groundwater not under the direct influence of surface water and serves more than 4,900 persons must collect routine distribution coliform samples at regular time intervals throughout the month.

(D) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves 4,900 persons or fewer may collect all required routine distribution coliform samples on a single day if they are taken from different sites.

(E) A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum routine monitoring requirements of this subsection.

(F) If a system collecting fewer than five routine distribution coliform samples per month has one or more total coliform-positive samples and the executive director does not invalidate the sample(s) in accordance with subsection (c)(4) of this section, it must collect at least five routine distribution coliform samples during the next month the system provides water to the public.

(3) Repeat distribution coliform sampling requirements. Systems shall conduct repeat monitoring if one or more of the routine samples is found to contain coliform organisms.

(A) If a routine distribution coliform sample is coliform-positive, the public water system must collect a set of repeat distribution coliform samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed.

(i) A system which collects more than one routine distribution coliform sample per month must collect no fewer than three repeat samples for each coliform-positive sample found.

(ii) A system which collects one routine distribution coliform sample per month must collect no fewer than four repeat samples for each coliform-positive sample found.

(B) The system must collect all repeat samples on the same day, except a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(C) The system must collect at least one repeat sample from the sampling tap where the original coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other samples must be collected within five connections upstream of that point.

(D) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in subparagraphs (A) - (C) of this paragraph. The additional samples must be collected within 24 hours of being notified of the positive result or as soon as possible if the local laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded.

(E) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample is found to contain total coliform bacteria, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(4) Raw groundwater source monitoring. Any raw groundwater source sample required under this paragraph must be collected at a location prior to any treatment of the groundwater source.

(A) General requirements. A groundwater system must conduct triggered source water monitoring for *E. coli* or other fecal indicators, if both of the following conditions exist.

(i) The system does not provide at least 4-log treatment of viruses before or at the first customer for each groundwater source; and

(ii) The system is notified that a routine distribution coliform sample is positive and the sample is not invalidated under paragraph (5) of this subsection.

(B) Sampling requirements. A groundwater system must collect, within 24 hours of notification of the distribution total coliform positive sample, at least one raw groundwater source *E. coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected.

(i) The executive director may extend the 24-hour time limit on a case-by case basis if the system cannot collect the raw groundwater source sample within 24 hours due to circumstances beyond its control.

(ii) If approved by the executive director and documented in the system's monitoring plan, systems with more than one groundwater source may be allowed to sample a representative groundwater source or sources. Systems must modify their current monitoring plan to identify one or more groundwater sources that are representative of each distribution coliform sampling site and is intended to be used for representative source sampling.

(iii) A groundwater system serving 1,000 people or fewer may use one of the four required repeat samples collected from a raw groundwater source to meet both the repeat requirements of subparagraph (A)(ii) of this paragraph and the triggered raw source monitoring requirements in this paragraph. If a required repeat sample is used to meet both requirements and found to be *E. coli* positive, the system will have achieved an acute MCL as defined in subsection (b)(1)(C) of this section and corrective action will be required for the groundwater source were the sample was found to be *E. coli* positive.

(C) Consecutive and wholesale systems. Consecutive groundwater systems receiving drinking water from a wholesaler must notify the wholesale system(s) within 24 hours of being notified of the positive coliform distribution sample. The wholesale groundwater system(s) must comply with the following:

(i) A wholesale groundwater system that receives notice of a distribution coliform sample positive from a consecutive system it serves must collect a sample from each of its groundwater sources within 24 hours of the notification and analyze each sample for the presence of *E. coli*.

(ii) If any raw source sample is *E. coli* positive, the wholesale groundwater system must notify all consecutive systems served by that groundwater source of the fecal indicator positive within 24 hours of being notified.

(D) Exceptions to the triggered source monitoring requirements. A groundwater system is not required to comply with the triggered source monitoring requirements if any of the following conditions exist.

(i) The executive director determines and documents in writing, that the distribution coliform positive sample is caused by a distribution system deficiency; or

(ii) The distribution coliform positive sample is collected at a location that meets the distribution coliform sample invalidation criteria as specified in paragraph (5) of this subsection.

(E) Assessment source monitoring. The executive director may require monthly source assessment raw monitoring without the presence of a positive total coliform distribution sample if well conditions exist that indicate the groundwater may be susceptible to fecal contamination.

(5) Culture analysis. If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium will be analyzed to determine if fecal coliforms or bacteria are present. If fecal coliforms or *E. coli* are present, the system must notify the executive director by the end of the day in accordance with subsection (g) of this section.

(d) Analytical and invalidation requirements for microbial contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for microbial contaminants shall be performed at a laboratory certified by the executive director.

(1) Distribution coliform sample invalidation. The executive director may invalidate a distribution total coliform-positive sample if one of the following conditions is met.

(A) The executive director may invalidate a sample if the laboratory provides written notice that improper sample analysis caused the total coliform-positive result.

(B) The executive director may invalidate a sample if the results of repeat samples collected as required by this section determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The executive director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples.

(C) The executive director may invalidate a sample if there are substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in subsection (f) of this section. The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and the action the system has taken, or will take, to correct this problem. The executive director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(D) The executive director may invalidate a sample if the laboratory provides written notice that the sample was unsuitable for analysis.

(E) If a sample is invalidated by the laboratory, the system must collect another sample from the same location as the original sample within 24 hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliform. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(2) A groundwater system may obtain invalidation of a fecal indicator positive groundwater source sample if the conditions of subparagraphs (A) and (B) of this paragraph apply. If the executive director invalidates a fecal indicator positive groundwater source sample, the system must collect another source sample as specified in subsection (c)(4) of this section within 24 hours of being notified of the invalidation.

(A) Notice from the laboratory must document that improper sample analysis occurred. If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli*. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. If approved by the executive director, the 24-hour time limit may be extended.

(B) The executive director may invalidate the sample if the system provides written documentation that there is substantial evidence that a fecal indicator positive groundwater source sample is not related to source water quality. If the executive director invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli.*

(e) Reporting requirements for microbial contaminants. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for microbial contaminants. Compliance with the requirements of this section shall be determined using the following criteria each month that the system is in operation.

(1) A system commits an acute MCL violation if:

(A) A repeat distribution system sample is fecal coliform-positive or *E. coli* -positive; or

(B) A total coliform-positive repeat distribution system sample follows a fecal coliform-positive or *E. coli* -positive routine distribution system sample.

(2) A system that collects at least 40 routine distribution coliform samples per month commits a nonacute MCL violation if more than 5.0 % of the samples collected during a month are total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli*-positive.

(3) A system that collects fewer than 40 routine distribution coliform samples per month commits a nonacute MCL violation if more than one sample collected during a month is total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli* -positive.

(4) A public groundwater system that is required to collect raw source samples, commits a treatment technique violation if any source sample is found to be positive for *E. coli* or other approved fecal indicator. A public groundwater system is required to conduct corrective action as described in §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques) if a source sample is confirmed positive for *E. coli* or other fecal indicators.

(5) A public water system that fails to provide the required number of suitable distribution coliform samples commits a monitoring violation.

(6) A public water system that fails to provide the required number of suitable raw source samples commits a monitoring violation.

(7) A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(8) A public water system that fails to do a required public notice or certify that notification has been performed commits a public notice reporting violation.

(9) Results of all routine and repeat distribution coliform samples not invalidated by the executive director must be included in determining compliance with the MCL for total coliforms.

(10) Distribution coliform samples invalidated by the executive director shall not be included in determining compliance with the MCL for total coliforms.

(11) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for microbiological contaminants.

(g) Public notification for microbial contaminants. A system that is out of compliance with the requirements described in this section must notify the public using the procedures described in §290.122 of this title (relating to Public Notification) for microbial contamination.

(1) A public water system that commits an acute MCL violation for microbial contaminants must notify the water system customers in accordance with the boil water notice requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the public notice requirements of §290.122(a) of this title.

(2) A public groundwater system that receives a *E. coli* or other fecal indicator positive source sample that has not been invalidated must notify the water system customers within 24-hours in accordance with the requirements of §290.122(a)(1)(F) of this title. The system must continue to notify the public annually until the fecal contamination in the source water is determined by the executive director to be corrected as specified under §290.116 of this title.

(3) A public water system that has fecal coliforms or *E. coli* present must notify the executive director by the end of the day when the system is notified of the test result, unless the system is notified of the result after the commission's office is closed, in which case the system must notify the executive director before the end of the next business day.

(4) A public water system which commits an MCL violation must report the violation to the executive director immediately after it learns of the violation, but no later than the end of the next business day, and notify the public in accordance with §290.122(b) of this title.

(5) A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the executive director within ten days after the system discovers the violation and notify the public in accordance with §290.122(c) of this title.

§290.111. Surface Water Treatment.

(a) Applicability. A public water system that treats surface water or groundwater under the direct influence of surface water must comply with the requirements of this section.

(1) A public water system that treats surface water must comply with the requirements of this section beginning on the effective date of the rule.

(2) A public water system that treats groundwater under the direct influence of surface water must comply with the requirements of this section beginning on a date specified by the executive director. This compliance date shall not exceed 18 months from the date that the executive director first notifies the system that the groundwater source is under the direct influence of surface water.

(3) A public water system that treats both surface water and groundwater under the direct influence of surface water must meet the compliance date in paragraph (1) of this subsection at plants that treat any surface water and must meet the compliance date in paragraph (2) of this subsection at plants that treat only groundwater under the direct influence of surface water.

(b) Raw surface water monitoring. A public water system that treats surface water or groundwater under the direct influence of surface water must conduct two rounds of special raw surface water monitoring at each surface water intake and at each well producing groundwater under the direct influence of surface water for the purpose of establishing minimum treatment technique requirements for *Cryptosporidium* and other pathogens. The executive director may waive the raw surface water monitoring requirements for an intake or a well if the combination of pathogen removal and disinfection processes used to treat the raw water achieves at least a 5.5-log total removal and inactivation of *Cryptosporidium parvum*.

(1) Raw water monitoring plans. A system must submit a proposed raw surface water monitoring plan when requested by the executive director. The proposed plan must identify all of the system's intakes and wells; provide the location of each raw water sampling point; include the parameters that will be monitored and the frequency and dates that samples will be collected; and specify the laboratories that will perform the analyses. Raw surface water monitoring must be conducted in accordance with a monitoring plan that has been approved by the executive director. The executive director shall not approve a raw surface water monitoring plan unless it indicates that the system will meet the requirements of 40 Code of Federal Regulations (CFR) §§141.701- 141.707.

(2) Sampling location. A system must collect each raw water sample at a location approved by the executive director. Samples must be collected from the raw water line prior to any treatment and before the first point where a recycled stream is returned to the treatment process.

(3) Sampling parameters and frequency. A system must collect raw water samples at a frequency approved by the executive director.

(A) Unless the executive director approves an alternate sampling regimen, a system must monitor turbidity, *E. coli*, and *Cryptosporidium* levels in the raw water at least once each month for a period of not less than 24 consecutive months if the system:

(i) serves at least 10,000 people; or

(ii) is part of combined distribution system in which one or more systems serve at least 10,000 people and the system with the well or intake regularly provides water to another public water supply.

(B) A system that is not required to monitor under subparagraph (A) of this paragraph must either monitor in accordance with the requirements of subparagraph (A) of this paragraph or monitor *E. coli* levels in their raw water at least once every two weeks for a period of not less than 12 consecutive months. A system that does not initially monitor for *Cryptosporidium* and has elevated *E. coli* levels must conduct additional raw water monitoring.

(i) A system must conduct additional monitoring if the average *E. coli* level exceeds 50 colony-forming units per 100 milliliters in the raw water produced by a surface water intake located on a river or flowing stream or the raw water from a well producing groundwater under the direct influence of surface water located closest to a river or flowing stream.

(ii) A system must conduct additional monitoring if the average *E.coli* level exceeds 10 colony-forming units per 100 milliliters in the raw water from a surface water intake not located on a river or flowing stream or the raw water produced by a well producing groundwater under the direct influence of surface water not located on a river or flowing stream.

(iii) A system that must conduct additional monitoring must monitor *Cryptosporidium* levels in the raw water at least twice each month for a period of not less than 12 consecutive months, or at least once each month for a period of not less than 24 consecutive months.

(C) The executive director may approve an alternate sampling frequency for intakes and wells that operate only part of the year.

(4) Sampling schedule and dates. A system must collect raw water samples in accordance with a schedule approved by the executive director.

(A) Except as provided in paragraph (B), a system must begin each round of raw source water monitoring no later than the date shown in the following table titled "Raw Source Water Monitoring Schedule."
Figure: 30 TAC §290.111(b)(4)(A)

(B) If a system installs a new well or intake after the date the first round of raw source water monitoring must begin, the system must submit a proposed monitoring schedule for the first round of special raw surface water monitoring no later than three months after first placing the new source in operation.

(C) A system must collect a raw water sample no sooner than two days before the date approved by the executive director and no later than two days after the approved date, unless an extreme condition or situation exists that poses a danger to the sample collector.

(D) A system which is unable to collect a sample within this five-day period must collect the sample as close as possible to the approved date and must notify the executive director in writing why the sample was not collected on the approved date.

(5) Replacement samples. If, for any reason, the laboratory is unable to report a valid analytical result for a scheduled sample, the system must submit a replacement sample on a date approved by the executive director.

(6) Analytical requirements. Raw water samples collected pursuant to this subsection must be analyzed at an approved or certified laboratory.

(A) *Cryptosporidium* samples must be analyzed using one of the methods approved in Title 40 Code of Federal Regulations

(CFR) §141.704(a) and by a laboratory that is approved under Environmental Protection Agency's (EPA) Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water.

(B) *E. coli* samples must be analyzed using one of the methods approved in 40 CFR §136.3(a) for the enumeration of *E. coli* in source water and by a laboratory that is certified or accredited by the executive director.

(i) Systems must ensure that samples are maintained between 0°C and 10°C during storage and transportation to the laboratory.

(ii) The time between sample collection and the initiation of the analysis may not exceed 30 hours without the prior approval of the executive director.

(iii) The executive director may allow up to 48 hours between sample collection and the initiation of the analysis if the analysis is conducted by the Colilert reagent version of Standard Method 9223B.

(C) Turbidity samples must be analyzed using a method and at a laboratory approved by the executive director.

(7) Reporting requirements for raw surface water sample results. The owner or operator of a public water system must provide to the executive director with a copy of the results of any test, measurement, or analysis required by this subsection.

(A) Results must be submitted using the Raw Surface Water Sampling Report (commission Form 20358) or in another format that is approved by the executive director and contains the information required by 40 CFR §141.706(e).

(i) If the sample was not collected within the 5-day window described in paragraph (4)(A) of this subsection, the result must be accompanied by the information required in paragraph (4)(B) of this subsection.

(ii) If the laboratory report indicates that a valid analytical result could not be reported, the laboratory report must be accompanied by a request to collect a replacement sample.

(B) The results must be submitted within ten days of their receipt by the public water system and no later than 10 days after the end of the first month following the month that the sample was collected.

(C) The results and any additional information must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(c) Treatment technique requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum treatment technique requirements before the water reaches the entry point to the distribution system.

(1) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 4.0-log removal/inactivation of viruses.

(2) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 3.0-log removal/inactivation of *Giardia lamblia*.

(3) A public water system that is required by subsection (b) of this section to conduct raw surface water monitoring must comply with the requirements of this paragraph.

(A) The average *Cryptosporidium* level and Bin Classification shall be determined in accordance with the requirements established by 40 CFR §141.710.

(i) For systems that collect a total of at least 48 *Cryptosporidium* samples, the average concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 *Cryptosporidium* samples, the average concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for *Cryptosporidium* for only one year (i.e., collect 24 samples in 12 months), the average concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under 40 CFR §141.701(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(v) If the monthly *Cryptosporidium* sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs.

(B) Unless otherwise specified in this paragraph, the combination of pathogen removal and disinfection processes must achieve the removal/inactivation of *Cryptosporidium parvum* specified in the following table titled "Treatment Technique Requirements for *Cryptosporidium*," beginning 36 months after being assigned a Bin Classification by the executive director.
Figure: 30 TAC §290.111(c)(3)(B)

(i) A system that conducts the first round of special raw surface water monitoring according to the schedule contained in §291.114(b)(4)(A) of this title must comply with the requirements of this paragraph no later than the date shown in the following table, titled "Compliance Date for Existing Sources."
Figure: 30 TAC §290.111(c)(3)(B)(i)

(ii) A system that conducts the first round of special raw surface water monitoring according to the schedule contained in §291.114(b)(4)(B) of this title must comply with the requirements of this paragraph no later than six years after beginning the first round of monitoring on the new source.

(iii) The executive director may allow a system making capital improvements an additional two years to comply with the treatment requirement of this paragraph.

(C) A system that has been assigned to Bin 3 or Bin 4 must achieve at least 1.0-log removal/inactivation of *Cryptosporidium* using one or a combination of the following: bag filters, cartridge filters, chlorine dioxide, membranes, ozone, or ultraviolet light.

(D) Prior to the effective date of subparagraph (B) of this paragraph, the combination of disinfection and filtration processes used by a public water system to treat for *Cryptosporidium* must achieve at least a 2.0-log removal/inactivation of *Cryptosporidium parvum*.

(4) The combination of disinfection and filtration processes at plants that do not monitor each source in accordance with the require-

ments of subsection (b) of this section must achieve at least a 5.5-log removal /inactivation of *Cryptosporidium parvum*.

(5) The executive director may require additional levels of treatment in cases of poor source water quality.

(6) The executive director may establish minimum design, operational, and reporting requirements for watershed control programs and treatment processes used to meet the treatment technique requirements of this subsection.

(d) Microbial inactivation requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum disinfection requirements before the water is supplied to any consumer.

(1) Inactivation table. The disinfection process must achieve the minimum microbial inactivation levels shown in the following table.
Figure: 30 TAC §290.111(d)(1)

(A) The disinfection process at treatment plants not described in the Microbial Inactivation Requirements table must provide the level of disinfection required by the executive director.

(B) The executive director may require additional levels of treatment in cases of poor source water quality.

(C) The executive director may reduce the inactivation requirement for plants that meet the individual filter effluent performance criteria contained in subsection (g)(1) of this section and have been assigned a Bin 1 classification under the provisions of subsection (c)(3) of this section.

(D) A system that fails to meet the inactivation requirements of this section for a period of longer than four consecutive hours commits a nonacute treatment technique violation. A system that fails to conduct the additional testing required by subsection (d)(2)(C) of this section also commits a nonacute treatment technique violation.

(E) A system that has a plant assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section and uses ultraviolet light (UV) disinfection facilities to meet the treatment technique requirements for *Cryptosporidium* must meet the inactivation requirements of this subsection in at least 95% of the water treated each month.

(2) Monitoring requirements for chemical disinfectants. Public water systems must monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this subsection must be conducted at sites designated in the public water system's monitoring plan.

(A) The disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone must be measured at least once each day during a time when peak hourly raw water flow rates are occurring.

(B) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs.

(C) Treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(3) Monitoring requirements for UV disinfection facilities. Public water systems must monitor the performance of the UV disinfection facilities.

(A) A system must continuously monitor and record UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director to ensure that the units are operating within validated conditions.

(B) A system with a plant that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section must also monitor and record the amount of water treated by each UV unit each month and the amount of water produced each month when the unit was not operating within validated conditions.

(4) Analytical requirements. All monitoring required by this subsection must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L) using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration;

(iii) a DPD method that uses a colorimeter or spectrophotometer; or

(iv) Springaldizine (FACTS).

(D) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration; or

(iii) a DPD method that uses a colorimeter or spectrophotometer.

(E) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(F) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using the Indigo Method and using a colorimeter or spectrophotometer.

(G) The UV dose must be measured by a calibrated sensor approved by the executive director.

(e) Filtration requirements for conventional filters. A system that uses granular media filters to treat surface water or groundwater under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements for combined filter effluent. Treatment plants using conventional media filtration must meet the following turbidity requirements.

(A) The turbidity level of the combined filter effluent must never exceed 1.0 nephelometric turbidity unit (NTU).

(B) The turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(2) Performance criteria for individual filter effluent. The filtration techniques must ensure the public water system meets the following performance criteria.

(A) The turbidity from each individual filter effluent should never exceed 1.0 NTU.

(B) At a public water system that serves 10,000 people or more, the turbidity from each individual filter effluent should not exceed 0.5 NTU at four hours after the individual filter is returned to service after backwash or shutdown.

(3) Routine turbidity monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least every four hours that the system serves water to the public.

(C) Except as provided in subparagraph (D) of this paragraph, a system must continuously monitor the filtered water turbidity at the effluent of each individual filter and record the turbidity value every 15 minutes.

(D) A system that serves fewer than 10,000 people and monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under the provisions of §290.42(d)(11)(E)(ii) of this title (relating to Water Treatment) must:

(i) continuously monitor the turbidity of the combined filter effluent and record the turbidity value every 15 minutes; and

(ii) measure and record the turbidity level at the effluent of each filter at least once each day the plant is in operation.

(4) Special investigation requirements. A system which fails to produce water with acceptable turbidity levels must investigate the cause of the problem and take appropriate corrective action. The executive director can waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(A) A public water system that fails to meet the turbidity criteria specified in subsection (e)(2) of this section must conduct additional monitoring.

(i) Each time a filter exceeds an applicable filtered water turbidity level specified in subsection (e)(2) of this section for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or produce a filter profile on the filter within seven days of the exceedance.

(ii) Each time a filter exceeds the filtered turbidity level specified in subsection (e)(2)(A) of this section for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on the filter within 14 days of the third exceedance.

(iii) Each time the filtered water turbidity level for a specific filter or any combination of individual filters exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation (CPE). If the system serves at least 10,000 people, the CPE must be conducted within 90 days of the first exceedance in the second month. If the system serves fewer than 10,000 people, the CPE must be conducted within 120 days of the first exceedance in the second month.

(B) A system that serves fewer than 10,000 people, monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity, and fails to meet the turbidity criteria in subsection (e)(1)(A) of this section must conduct additional monitoring. The executive director may waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(i) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or complete a filter profile on the combined filter effluent within seven days of the exceedance.

(ii) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on each filter within 14 days of the third exceedance.

(iii) Each time the combined filter effluent turbidity level exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation within 120 days of the first exceedance in the second month.

(5) Analytical requirements for turbidity. All monitoring required by this subsection must be conducted by a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures). Equipment used for compliance measurements must be maintained and calibrated in accordance with §290.46(s) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(A) Turbidity must be measured with turbidimeters that use one of the following methods:

(i) EPA Method 180.1 and Standard Method 2130B;

(ii) Great Lakes Instruments Method 2; or

(iii) Hach FilterTrak Method 10133.

(B) A system monitoring the performance of individual filters with on-line turbidimeters and recorders may monitor combined filter effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter or measuring the turbidity level in grab samples with a bench-top turbidimeter.

(C) Continuous turbidity monitoring must be conducted using a continuous, on-line turbidimeter and a device that records the turbidity level reading at least once every 15 minutes.

(i) Turbidity data may be recorded electronically by a supervisory control and data acquisition system (SCADA) or on a strip chart. The recorder must be designed so that the operator can accurately determine the turbidity level readings at 15-minute intervals.

(ii) If there is a failure in the continuous turbidity monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(iii) If the continuous turbidity monitoring equipment at a system serving fewer than 10,000 people malfunctions, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(D) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must monitor the performance of individual filters using a bench-top turbidimeter.

(f) Filtration requirements for other filters. A system that uses cartridge filters, membrane filters, or other unconventional filtration systems to treat surface water or groundwater under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements. A system that uses unconventional filtration technologies such as membrane filters or cartridge filters must meet treatment technique requirements prescribed by the executive director.

(A) The filtration facilities must meet turbidity limits established by the executive director.

(B) The filtration facilities must be operated and maintained in accordance with requirements that the executive director determines are needed to demonstrate the amount of *Giardia* and *Cryptosporidium* removal achieved.

(2) Monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least every four hours that the system serves water to the public.

(C) A system using membranes must use a method approved by the executive director to continuously monitor the quality of the water produced by each membrane unit and record the monitoring results at least once every five minutes. The executive director may approve monitoring parameters other than turbidity and decrease the frequency to once every 15 minutes if the approved operating parameters will allow consecutive readings to be obtained between backwash or backflush cycles.

(D) A system using membranes must conduct direct integrity testing on each membrane unit using a procedure approved by the executive director.

(i) Direct integrity tests must be conducted in a manner that will detect a membrane defect of 3 microns or smaller and demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process by the executive director.

(ii) Direct integrity test method must calculate the log removal value for a 3-micron size particle and establish an upper control limit which assures that the unit is capable of meeting the removal credit approved by the executive director.

(iii) A system that has been assigned a Bin 1 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once every seven days. The executive directed may reduce the testing requirements for other membrane units.

(iv) A system that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once each day that the membrane unit is used for filtration. The executive director may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium* removal or inactivation, or reliable process safeguards.

(v) A system must immediately conduct a direct integrity test on any membrane unit that produces filtered water with turbidity level above 0.15 NTU on two consecutive readings. The executive director must establish alternate site-specific control limits for systems that use other approved technology in lieu of turbidimeters to continuously monitor the performance of membrane units.

(vi) A system must immediately remove any membrane unit that fails a direct integrity test from service until the membrane modules in that unit are inspected and, if necessary, repaired. A membrane unit that has been removed from service may not be returned to service until it has passed a direct integrity test.

(E) A system that uses cartridge filters must continuously monitor the performance of the filtration process in a manner approved by the executive director.

(3) Analytical requirements. All monitoring required by this subsection must be conducted by a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title. Equipment used for compliance measurements must be maintained and calibrated in accordance with §290.46(s) of this title.

(A) Turbidity of the combined effluent must be measured with turbidimeters that meet the requirements of subsection (e)(5)(A) of this section.

(B) The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(C) A system continuously monitoring the performance of individual cartridges or membrane units may monitor combined effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter, or by measuring the turbidity level in grab samples with a bench-top turbidimeter.

(D) Data collected from on-line instruments may be recorded electronically by a SCADA system or on a strip chart recorder. The recorder must be designed so that the operator can accurately determine the value of readings at the monitoring interval approved by the executive director.

(i) If there is a failure in the continuous monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(ii) If there is a failure in the continuous monitoring equipment at a system serving fewer than 10,000 people, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(E) A system that uses cartridge filters and does not continuously monitor the turbidity of each filter unit must monitor the per-

formance of individual filters at least once each day using a bench-top turbidimeter.

(g) Other treatment credits for systems in Bins 2 through 4. The executive director may grant additional pathogen removal and inactivation credit to systems that meet enhanced design, operational, maintenance, and reporting requirements.

(1) Individual filter effluent. The executive director may approve an additional 1.0-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses conventional granular media filters.

(A) The executive director will approve the additional credit for a plant if:

(i) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(ii) the turbidity level at each individual filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(iii) no individual filter produced water with turbidity level above 0.3 NTU in two consecutive 15-minute readings.

(B) The executive director may also approve the additional credit for a plant that does not meet the requirements of subparagraph (A) of this paragraph if:

(i) the executive director determines that the failure to meet the requirements of subparagraph (A) of this paragraph could not have been prevented through optimizing plant operations, design, or maintenance; and

(ii) the system has experienced no more than two such failures within the most recent 12 months.

(2) Combined filter effluent. The executive director may approve an additional 0.5-log removal credit for *Cryptosporidium* to a treatment plant that uses conventional granular media filters if:

(A) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(B) the turbidity level at the combined filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(C) the plant does not receive additional treatment credit under paragraph (1) of this subsection.

(3) Second stage filtration. The executive director will approve an additional 0.5-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses a second, separate stage of conventional granular media filters if:

(A) the filters in both stages meet minimum design criteria approved by the executive director;

(B) all of the water produced by the plant passes through both stages of filtration;

(C) the system continuously monitored the filtered water turbidity at the effluent of each individual filter in the first stage of filtration and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell; and

(D) no individual filter in the first stage of filtration produced water with turbidity level above 1.0 NTU in two consecutive 15-minute readings.

(4) Other pathogen control strategies. The executive director may approve an additional removal or inactivation credit for other pre-filtration, filtration, or post-filtration strategies that can demonstrate effective, consistent levels of enhanced pathogen control.

(A) The alternative strategy must achieve a quantifiable reduction in the risk of waterborne disease in all of the treated water produced by the plant.

(B) The alternative strategy must conform to any applicable requirement of 40 CFR §§141.715- 141.720.

(C) The executive director may establish minimum site-specific design, operational, maintenance, and reporting requirements for any alternative strategy used to meet minimum treatment technique requirements of subsection (c) of this section.

(D) The executive director may not approve additional removal credit under the provisions of this paragraph to any strategy that includes a treatment process has been assigned additional removal or inactivation credit under any other provision of this subsection.

(h) Reporting requirements. Public water systems must properly complete and submit periodic reports to demonstrate compliance with this section.

(1) A system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours.

(2) A system that continuously monitors the performance of individual filters must submit a Surface Water Monthly Operating Report (commission Form 0102C) each month for each plant that treats surface water sources or groundwater sources under the direct influence of surface water.

(3) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must submit a Surface Water Monthly Operating Report for 2-Filter Plants (commission Form 0103) each month for each plant that treats surface water or groundwater under the direct influence of surface water.

(4) A system that must complete the additional monitoring required by subsection (e)(4)(A)(i) or (e)(4)(B)(i) of this section must submit a Filter Profile Report for Individual Filters (commission Form 10276) with its Surface Water Monthly Operating Report.

(5) A system that must complete the additional monitoring required by subsection (e)(4)(A)(ii) or (e)(4)(B)(ii) of this section must submit a Filter Assessment Report for Individual Filters (commission Form 10277) with its Surface Water Monthly Operating Report.

(6) A system that must complete the additional monitoring required by subsection (e)(4)(A)(iii) or (e)(4)(B)(iii) of this section must submit a Comprehensive Performance Evaluation Request Form (commission Form 10278) with its Surface Water Monthly Operating Report.

(7) A system that uses membranes must submit a Membrane Monthly Operating Report (commission Form 20356) for each plant that treats surface water or groundwater under the direct influence of surface water. The report must accompany the plant's Surface Water Monthly Operating Report.

(8) A system that uses UV disinfection to meet the minimum treatment technique requirements for surface water or ground-

water under the direct influence of surface water must submit a UV Monthly Operating Report (commission Form 20357) with its Surface Water Monthly Operating Report. The report must accompany the plant's Surface Water Monthly Operating Report.

(9) A system must submit any additional reports required by the executive director to verify the level of pathogen removal or inactivation achieved by the system's treatment plants.

(10) A system must submit its *Cryptosporidium* bin classification.

(11) Periodic reports required by this section must be submitted to the Water Supply Division, Texas Commission on Environmental Quality, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(i) Compliance determination. Compliance with the requirements of this section must be determined using the criteria of this subsection.

(1) A public water system that fails to complete source water monitoring or conduct the routine monitoring tests and any applicable special investigations required by this section commits a monitoring violation.

(2) A public water system that fails to submit a report required by subsection (h) of this section commits a reporting violation.

(3) A public water system using conventional filters that has a turbidity level exceeding 5.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(4) A public water system using membrane filters that has a turbidity level exceeding 1.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(5) Except as provided in paragraphs (3) and (4) of this subsection, a public water system that violates the requirements of subsections (c), (d)(1), (e)(1), and (f)(1) of this section commits a nonacute treatment technique violation.

(6) A system that fails to request a Bin Classification within six months of completing a round of source water monitoring commits a treatment technique violation.

(7) A system that fails to correct the performance-limiting factors identified in a comprehensive performance evaluation conducted under the requirements of subsection (e)(4)(A)(iii) or (e)(4)(B)(iii) of this section commits a violation.

(8) A system that fails to properly issue a public notice required by subsection (j) of this section commits a violation.

(j) Public notification. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.

(1) A public water system that commits an acute treatment technique violation must notify the executive director and the water system customers of the acute violation within 24 hours in accordance with the requirements of §290.46(q) of this title and §290.122(a) of this title (relating to Public Notification).

(2) A public water system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours of the violation.

(A) Based on the results of the consultation, the executive director will determine whether the water system must notify its customers in accordance with the requirements of §290.122(a) or (b) of this title.

(B) A water system that fails to consult with the executive director as required by this paragraph must notify its customers in accordance with the requirements of §290.122(a) of this title.

(3) Except as provided in paragraphs (1) and (2) of this subsection, a public water system that fails to meet the treatment technique requirements of subsections (c),(d)(1), (e)(1), or (f)(1) must notify the executive director by the end of the next business day and the water system customers in accordance with the requirements of §290.122(b) of this title.

(4) A public water system that fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.113. Stage 1 Disinfection By-products (TTHM and HAA5).

(a) Applicability for TTHM and HAA5. All community and nontransient, noncommunity water systems shall comply with the requirements of this section.

(1) Systems must comply with the Stage 1 requirements in this section until the date shown in the table entitled "Date to Start Stage 2 Compliance."

(2) Until the date shown in the table in paragraph (1) of this subsection, systems must continue to monitor according to this section.
Figure: 30 TAC §290.113(a)(2)

(b) Maximum contaminant level (MCL) for TTHM and HAA5. The running annual average concentration of total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5) shall not exceed the maximum contaminant levels.

(1) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(2) The MCL for HAA5 is 0.060 milligrams/liter.

(c) Monitoring requirements for TTHM and HAA5. Systems must take all TTHM and HAA5 samples during normal operating conditions. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan.

(1) The minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples.

(2) All samples taken within one sampling period shall be collected within a 24-hour period.

(3) Systems must routinely sample at the frequency and locations given in the following table entitled "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(3)

(4) The executive director may reduce the monitoring frequency for TTHM and HAA5 as indicated in the following table entitled " Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(4)

(A) The executive director may not reduce the routine monitoring requirements for TTHM and HAA5 until a system has completed one year of routine monitoring in accordance with the provisions of paragraph (3) of this subsection.

(B) A system that is on reduced monitoring and collects quarterly samples for TTHM and HAA5 may remain on reduced monitoring as long as the running annual average of quarterly averages for TTHM and HAA5 is no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(C) A system that is on a reduced monitoring and monitors no more frequently than once each year may remain on reduced monitoring as long as TTHM and HAA5 concentrations are no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(5) The executive director may require a system to return to the routine monitoring frequency described in paragraph (3) of this subsection.

(A) A system that does not meet the requirements of paragraph (4)(B) or (C) of this subsection must return to routine monitoring in the quarter immediately following the quarter in which the results exceed 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively.

(B) A system that is on reduced monitoring and makes any significant change to its source of water or treatment program shall return to routine monitoring in the quarter immediately following the quarter when the change was made.

(C) If a system is returned to routine monitoring, routine monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory certified by the executive director.

(e) Reporting requirements for TTHM and HAA5. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(2) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(3) Compliance with the MCLs for TTHM and HAA5 shall be based on the running annual average of all samples collected during the preceding 12 months.

(A) A public water system that samples for TTHM and HAA5 each quarter must calculate the running annual average of the quarterly averages.

(B) A public water system that samples for TTHM and HAA5 no more frequently than once each year must calculate the annual average of all samples collected during the year.

(C) All samples collected at the sampling sites designated in the public water system's shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(4) A public water system violates the MCL for TTHM if the running annual average for TTHM exceeds the MCL specified in subsection (b)(1) of this section.

(5) A public water system violates the MCL for HAA5 if the running annual average for HAA5 exceeds the MCL specified in subsection (b)(2) of this section.

(6) If a public water system is routinely sampling in accordance with the requirements of subsection (c)(3) of this section and an individual sample or quarterly average will cause the system to exceed the MCL for TTHM or HAA5, the system is in violation of the respective MCL at the end of that quarter.

(7) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that violates an MCL given in subsection (b)(1) or (2) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.115. Stage 2 Disinfection By-products (TTHM and HAA5).

(a) Applicability for TTHM and HAA5. All community and nontransient, noncommunity water systems shall comply with the requirements of this section for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5).

(1) Systems must comply with the initial monitoring requirements starting on the dates given in subsection (c) of this section.

(2) Systems must comply with all of the additional requirements in this section starting on the date shown in the table entitled "Date to Start Stage 2 Compliance."
Figure: 30 TAC §290.115(a)(2)

(A) Systems required to conduct quarterly monitoring, must begin monitoring in the first full calendar quarter that includes the compliance date in the table titled "Date to Start Stage 2 Compliance."

(B) Systems required to conduct routine monitoring less frequently than quarterly must begin monitoring in the calendar month approved by the executive director in their IDSE report or revised monitoring plan identifying Stage 2 sample sites.

(b) Maximum contaminant levels (MCL) and operational evaluation levels (OELs) for TTHM and HAA5. Systems shall comply with MCLs and OELs.

(1) The locational running annual average (LRAA) concentration of TTHM and HAA5 shall not exceed the maximum contaminant levels. A public water system that exceeds a MCL shall determine compliance as described in subsection (f) of this section.

(A) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(B) The MCL for HAA5 is 0.060 mg/L.

(2) The OEL at any monitoring location is the sum of the two previous quarters' results plus twice the current quarter's result, divided by 4 to determine an average. A public water system that exceeds an OEL shall perform operation evaluation monitoring and reporting described in subsection (e) of this section.

(A) The OEL for TTHM is 0.080 mg/L.

(B) The OEL for HAA5 is 0.060 mg/L.

(c) Monitoring requirements for TTHM and HAA5. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan as approved by the executive director.

(1) Monitoring locations. Systems must establish Stage 2 compliance monitoring sites throughout the distribution system at locations with the potential for relatively high disinfection by-product formation. Systems must determine Stage 2 compliance monitoring locations by the dates shown in the table titled "Date to Establish Stage 2 Sites."
Figure: 30 TAC §290.115(c)(1)

(A) Systems that perform initial distribution system evaluation (IDSE) sampling in accordance with subsection (c)(5) of this section must use the results to set Stage 2 compliance monitoring sites.

(B) Systems that do not perform IDSE sampling must set Stage 2 compliance monitoring sites through consultation with the executive director in accordance with this subparagraph.

(i) Systems required to sample at the same number of sites under Stage 1 and Stage 2, can use the Stage 1 sites for Stage 2 compliance monitoring.

(ii) Systems required to sample at more sites under Stage 2 than Stage 1 must identify Stage 2 sites in addition to the existing Stage 1 sites. Systems must identify additional sites representing areas of the distribution system with potentially high TTHM or HAA5 levels and provide the rationale for identifying these locations as having high levels of TTHM or HAA5. The required number of compliance monitoring locations must be identified.

(iii) Systems required to sample at fewer sites under Stage 2 than Stage 1 must identify which locations will be used for Stage 2. Stage 2 sites will be selected by alternating selection of Stage 1 locations representing the highest TTHM levels and highest HAA5 levels until the required number of compliance monitoring locations have been identified.

(C) The protocol given in Title 40 Code of Federal Regulations (40 CFR) §141.605(c) for selecting Stage 2 sample sites is hereby adopted by reference.

(D) To change monitoring locations, a system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. Changes must be approved by the executive director and included in the monitoring plan.

(2) Routine sampling frequency and number of sample sites are given in the following table, titled "Routine Stage 2 Monitoring Frequency and Number of Sites." Systems must take all routine compliance TTHM and HAA5 samples during normal operating conditions.
Figure: 30 TAC §290.115(c)(2)

(3) Monitoring may be reduced when the LRAA is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 at all Stage 2 compliance monitoring locations. The Stage 2 reduced sampling frequency and number of sample sites are given in the following table, titled "Reduced Stage 2 Monitoring Frequency and Number of Sites."
Figure: 30 TAC §290.115(c)(3)

(A) Only data collected under the provisions of §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)) and under this section may be used to qualify for reduced monitoring.

(B) In order to qualify for reduced monitoring, a system must meet the applicable conditions of this subparagraph.

(i) Systems with annual or less frequent routine monitoring qualify to remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(ii) Systems on quarterly reduced monitoring qualify to remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

(iii) To qualify for reduced monitoring, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or groundwater under the direct influence of surface water, based on monitoring conducted under §290.112(c)(2)(C) of this title (relating to Total Organic Carbon (TOC)).

(C) Systems will be returned to routine monitoring:

(i) if the LRAA at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 based on quarterly monitoring, or

(ii) if the annual (or triennial) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or

(iii) if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any treatment plant treating surface water or groundwater under the direct influence of surface water.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(E) A system that is on reduced Stage 1 monitoring in accordance with §290.113(c)(4) of this title that has monitoring locations for Stage 2 different from those under Stage 1 must initiate routine monitoring in accordance with subsection (c)(2) of this section on the schedule given in subsection (a) of this section.

(F) A system that is on reduced monitoring in accordance with §290.113(c)(4) of this title may remain on reduced monitoring after the dates identified in subsection (a)(2) of this section only if the system:

(i) received a very small system (VSS) Initial Distribution System Evaluation (IDSE) waiver under subsection (c)(5)(A) of this section or received a 40/30 IDSE waiver under subsection (c)(5)(B) of this section, and

(ii) meets the reduced monitoring criteria in (c)(3)(B), and

(iii) is approved to use the same monitoring locations under Stage 1 and Stage 2.

(G) The executive director may choose to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

(4) The executive director may increase monitoring in accordance with this paragraph.

(A) A system required to routinely monitor at a particular location annually or less frequently than annually under subsection (c)(2) of this section must increase monitoring to quarterly dual sample sets (every 90 days) at all locations if any TTHM compliance sample is greater than 0.080 mg/L or if any HAA5 compliance sample is greater than 0.060 mg/L at any location.

(B) The executive director may return a system on increased quarterly monitoring to routine monitoring after at least four consecutive quarters if the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(C) A system that is on increased monitoring under §290.113 of this title must remain on increased monitoring until the system qualifies for a return to routine monitoring under subsection (c)(4)(B) of this section. The increased monitoring schedule must be conducted at the Stage 2 monitoring locations approved under subsection (c)(1) of this section, beginning on the date identified in subsection (a)(2) of this section.

(5) All community systems and nontransient noncommunity systems that serve at least 10,000 people must comply with these Initial Distribution System Evaluation (IDSE) requirements.

(A) The executive director may grant a VSS IDSE monitoring waiver to systems that serve fewer than 500 people. Systems that receive a VSS IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a VSS IDSE waiver.

(B) The executive director may grant a 40/30 IDSE monitoring waiver to IDSE monitoring to systems with levels for TTHM less than 0.040 mg/L and levels for HAA5 less than 0.030 mg/L. Systems that receive a 40/30 IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a 40/30 IDSE waiver. The timing of samples that all need to be less than 0.040 mg/L and 0.030 mg/L respectively for TTHM and HAA5 are given in the following table, titled "Timing of Stage 1 Samples Evaluated for 40/30 Waiver."
Figure: 30 TAC §290.115(c)(5)(B)

(i) To qualify for a 40/30 IDSE waiver a system must certify to the executive director that every individual sample taken under §290.113 of this title were less than 0.040 mg/L for TTHM and less than 0.030 mg/L for HAA5, and must have not had any TTHM or HAA5 monitoring violations during the period specified in subsection (a) of this section.

(ii) To qualify for a 40/30 IDSE waiver, a system must submit compliance monitoring results, distribution system schematics, and recommended Stage 2 compliance monitoring locations to the executive director upon request. The executive director may require a system that fails to submit the requested information to perform IDSE sampling.

(iii) The executive director may still require a system that meets the 40/30 IDSE waiver requirements to do IDSE sampling under subparagraph (C) of this paragraph.

(C) Systems that must perform IDSE sampling must submit any needed documentation for waivers, produce an IDSE Plan, do IDSE sampling, and report the IDSE results to the executive director on the schedule in the following table titled "IDSE Schedule."
Figure: 30 TAC §290.115(c)(5)(C)

(i) The IDSE plan has required elements.

(I) The IDSE plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and also Stage 1 compliance monitoring under §290.113 of this title.

(II) The IDSE plan must include justification of IDSE monitoring location selection and a summary of data used to justify IDSE monitoring location selection.

(III) The IDSE plan must include the system type and population served by the system.

(ii) Systems must do required IDSE sampling in accordance with this clause.

(I) Systems must monitor at the number and type of sites indicated in the following table titled "Number and Type of IDSE Sample Sites:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(I)

(II) Systems must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5.

(III) IDSE sample locations must be different than the existing Stage 1 monitoring locations established under §290.113 of this title.

(IV) IDSE sample locations must be distributed throughout the distribution system.

(V) Systems must monitor at the frequency indicated in the following table titled "Frequency of IDSE Monitoring:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)

(VI) The IDSE monitoring frequency and locations may not be reduced.

(iii) The IDSE report must comply with the elements in this clause.

(I) The IDSE report must include all TTHM and HAA5 analytical results from Stage 1 compliance monitoring under §290.113 of this title and all IDSE sample results and locational running annual averages presented in a tabular or spreadsheet format acceptable as described in TCEQ regulatory guidance number 384: "How to Develop a Monitoring Plan for a Public Water System."

(II) If changed from the IDSE plan submitted under clause (ii) of this subparagraph, the IDSE report must also include an updated distribution system map, documentation verifying the population served, and an updated list of sources including their water type.

(III) The IDSE report must include an explanation of any deviations from the approved IDSE plan.

(IV) The IDSE report must recommend and justify Stage 2 compliance monitoring locations consistent with subsection (c)(1) of this section. The recommended Stage 2 compliance monitoring locations must be listed in a Stage 2 sample plan as part of the system's monitoring plan.

(iv) The executive director may approve a system specific study that meets the requirements in 40 CFR §141.602 to comply with IDSE sampling requirements. The commission hereby adopts the requirements of 40 CFR §141.602 by reference.

(D) The executive director may require a system to perform IDSE sampling or a system specific study. The executive director may require a system to perform IDSE sampling or a system specific study even if the system meets the criteria for an IDSE waiver. The executive director may require new systems and systems with a change in population or system type to perform IDSE sampling or a system specific study.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory certified by the executive director.

(e) Reporting requirements for TTHM and HAA5. Public water systems must submit reports related to TTHM and HAA5 to the executive director. Reports must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(1) Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later.

(A) The owner or operator of a public water system is responsible for reporting the following information for each monitoring location to the executive director within ten days of the end of any quarter in which monitoring is required:

(i) number of samples taken during the last quarter,

(ii) date and results of each sample taken during the last quarter,

(iii) arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter,

(iv) whether the MCL was violated at any monitoring location, and

(v) any OELs that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(B) If the LRAA based on fewer than four quarters would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report a potential MCL violation as part of the first report due following the compliance date or anytime thereafter that this determination is made.

(C) A system that treats surface water or groundwater under the direct influence of surface water that seeks to qualify for or remain on reduced TTHM and HAA5 monitoring must measure and report TOC monthly in accordance with §290.112 of this title (relating to Total Organic Carbon) and distribution system disinfection levels in accordance with §290.110 of this title (relating to Disinfection).

(2) A system that exceeds an OEL described in subsection (b)(2) of this section must conduct an operation evaluation and submit a written operation evaluation report that meets the requirements of this paragraph.

(A) The operation evaluation report must be submitted to the executive director no later than 90 days after being notified of the analytical result that causes the exceedance of the OEL.

(B) The operation evaluation report must document an examination of system treatment and distribution operation practices that may contribute to TTHM and HAA5 formation, including:

(i) storage tank operations;

(ii) excess storage capacity;

(iii) distribution system flushing;

(iv) changes in sources or source water quality;

(v) treatment changes or problems; and

(vi) what steps could be considered to minimize future exceedances.

(C) If the cause of the OEL exceedance is identifiable the scope of the report may be limited with the approval of the executive director. A request to limit the scope of the evaluation does not extend the schedule in paragraph (2)(A) of this subsection for submitting the written report. The executive director's approval to limit the scope of the operation evaluation report must be in writing. The system must keep a copy of the executive director's approval with the completed operation evaluation report.

(D) The operation evaluation report must be submitted and approved in writing.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A public water system violates the MCL for TTHM if any locational running annual average for TTHM exceeds an MCL specified in subsection (b)(1)(A) of this section. A public water system violates the MCL for HAA5 if any locational running annual average for HAA5 exceeds the MCL specified in subsection (b)(1)(B) of this section.

(A) Compliance with the MCLs for TTHM and HAA5 shall be based on the LRAA of all samples collected during four consecutive quarters of monitoring. If a single quarterly sample would cause an LRAA exceedance regardless of the results of subsequent quarters, compliance may be based on fewer than four quarters of data. Should a system fail to collect all required samples, compliance will be based on the available data. All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(B) Stage 2 MCL compliance determination with LRAAs will start after Stage 2 samples are collected.

(i) For systems required to conduct routine quarterly monitoring, compliance calculations will be made starting at the end of the fourth calendar quarter that follows the compliance date in subsection (a)(2) of this section and at the end of each subsequent quarter.

(ii) For systems on quarterly monitoring, where the LRAA based on fewer than four quarters would exceed the MCL regardless of the monitoring results of subsequent quarters, compliance will be calculated beginning with the first sample that causes that exceedance.

(iii) For systems that are required to monitor less frequently than quarterly, compliance shall be calculated beginning with the first compliance sample taken after the compliance date.

(iv) For systems monitoring annually or triennially that start monitoring quarterly in the quarter following an LRAA exceedance, compliance shall be calculated based on the results of all available samples.

(C) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(D) The executive director may choose to perform calculations and determine MCL exceedances in lieu of having the system report that information.

(E) IDSE results will not be used for the purpose of determining compliance with MCLs.

(2) A system that fails to monitor in accordance with this section commits a monitoring violation. A system on a quarterly monitoring schedule is in violation of the monitoring requirements for each quarter that it fails to monitor.

(3) A system that fails to perform a required operation evaluation under subsection (e)(2) of this section commits a monitoring violation.

(4) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(5) A system that fails to submit an operation evaluation report as required under subsection (e)(2) of this section commits a reporting violation.

(6) A system that fails to perform a required public notification commits a public notification violation.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that commits an MCL violation described in subsection (f)(1) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(3) Any IDSE compliance documents required under subsection (c)(5) of this section must be made available to the executive director or the public upon request.

(4) Any operation evaluation report required under subsection (e)(2) of this section must be made available to the executive director or the public upon request.

§290.116. Groundwater Corrective Actions and Treatment Techniques.

(a) Applicability. All groundwater public water systems must comply with the treatment techniques and corrective actions of this section if a raw groundwater source sample was positive for fecal indicators or if the system is not required to conduct raw groundwater source monitoring because it provides at least 4-log treatment of viruses.

(1) A groundwater system must provide written notification to the executive director before December 1, 2009, that it is not required to meet the raw groundwater source monitoring requirements under §290.109(c)(4) of this title (relating to Microbial Contaminants) because it provides at least 4-log treatment of viruses and begin compliance monitoring in accordance with subsection (c) this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission. If the system discontinues 4-log treatment of viruses before the first customer for any groundwater source, the system must conduct raw groundwater source sampling as required under §290.109(c)(4) of this title.

(2) A groundwater system that places a groundwater source in service after November 30, 2009, that is not required to meet the raw source monitoring requirements under §290.109(c)(4) of this title because the system provides at least 4-log treatment of viruses must begin compliance monitoring within 30 days of placing the source in service in accordance with subsection (c) of this section. The system must provide written notification to the executive director that it provides at least 4-log treatment of viruses at or before the first customer. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission. If the system discontinues 4-log treatment of viruses before or at the first customer for a groundwater source, the system must conduct raw groundwater source sampling as required under subsection (c)(4) of this section.

(b) Groundwater corrective action plan. All public water systems using groundwater must submit a corrective action plan and implement corrective action if a raw groundwater source sample was positive for fecal indicators.

(1) If a groundwater source sample was found to be fecal indicator positive, the system must consult with the executive director regarding appropriate corrective action and have an approved corrective action plan in place within 30 days of receiving written notification from a laboratory of the fecal indicator positive source sample collected under subsection (c)(4) of this section.

(2) Within 120 days of receiving written notification from a laboratory of the fecal indicator positive source sample, the system must have completed corrective action or be in compliance with an approved corrective action plan and schedule.

(3) Any changes to the approved corrective action plan or schedule must be approved by the executive director.

(4) The executive director may require interim measures for the protection of public health pending approval of the corrective action plan. The system must comply with these interim measures as well as with any schedules specified by the executive director.

(5) Systems that are required to complete corrective action must implement one or more of the procedures in this paragraph and the details of the implementation must be specified in the approved corrective action plan.

(A) The system may disinfect the groundwater source where the fecal indicator positive source sample was collected following the American Water Works Association (AWWA) standards for well disinfection and start monthly fecal indicator sampling at that source within 30 days after well disinfection. The executive director may discontinue the monthly source sampling requirement if corrective action is sufficient.

(B) The system may eliminate the source that was found to be fecal indicator positive and provide an alternate source if necessary. Eliminated sources must be disconnected from the distribution system.

(C) The system may identify and eliminate the source of fecal contamination followed by well disinfection according to AWWA well disinfection standards and begin monthly fecal indicator sampling within 30 days after well disinfection. The executive director may allow the system to discontinue the monthly source sampling requirement after making a determination that corrective action is sufficient.

(D) The system may provide treatment that reliably achieves at least 4-log treatment of viruses using inactivation, removal or an executive director-approved combination of inactivation and removal before the first customer of the groundwater source.

(c) Microbial inactivation requirements. A system that treats groundwater in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring shall meet minimum disinfection requirements demonstrating at least 4-log treatment of viruses before the water is distributed.

(1) Monitoring requirements for chemical disinfectants. Groundwater systems shall monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the system's monitoring plan.

(A) Groundwater systems serving a population greater than 3,300 must continuously monitor the residual disinfectant concentration at a location approved by the executive director and must record the lowest residual disinfectant concentration every day the groundwater source serves the public.

(B) Groundwater systems serving a population less than 3,300 must monitor the disinfectant residual in each disinfection zone at least once each day during a time when peak hourly raw water flow rates are occurring.

(C) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director.

(D) Groundwater treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(2) Monitoring requirements for ultraviolet light (UV) disinfection facilities. Public water systems shall monitor the UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director to ensure that the units are operating within validated conditions.

(3) Analytical requirements. All monitoring required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration;

(iii) a DPD method that uses a colorimeter or spectrophotometer; or

(iv) Springaldizine (FACTS)

(D) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration; or

(iii) a DPD method that uses a colorimeter or spectrophotometer.

(E) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(F) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using an indigo method that uses a colorimeter or spectrophotometer.

(d) Reporting requirements. Groundwater systems required to conduct corrective action in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring must report to the executive director in accordance with this subsection.

(1) A groundwater system required to conduct compliance monitoring for chemical disinfectants must submit a Groundwater Treatment Monthly Operating Report (commission Form 20362) for groundwater disinfection facilities monthly. Groundwater systems must submit the first form starting before the month of December 2009, to avoid raw groundwater source monitoring.

(2) A groundwater system must provide written notification to the executive director before December 1, 2009, that it is not required to meet the raw groundwater source monitoring requirements under paragraph §290.109(c)(4) of this title (relating to Microbial Contaminants) because it provides at least 4-log treatment of viruses and begin compliance monitoring in accordance with subsection §290.116(c) of this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission.

(3) A groundwater system required to complete corrective action under subsection (b) of this section must notify the executive director within 30 days of completing the corrective action.

(4) If a groundwater system is subject to the triggered source monitoring requirements of §290.109(c)(4)(A) of this title and does not conduct source monitoring, the system must provide written documentation that it was providing 4-log treatment of viruses within 30 days of the positive distribution coliform sample.

(e) Compliance determination. The executive director shall determine compliance for groundwater systems required to conduct corrective action in response to a fecal indicator positive source sample or in lieu of the raw groundwater source monitoring in accordance with this subsection.

(1) A groundwater system is in violation of the treatment technique requirement if it does not complete corrective action in accordance with the executive director-approved corrective action plan or any interim measures required by the executive director.

(2) A groundwater system is in violation of the treatment technique requirement if it is not in compliance with the executive director-approved corrective action plan and schedule.

(3) A groundwater system subject to the requirements of subsection §290.116(c) of this title that fails to maintain at least 4-log treatment of viruses is in violation of the treatment technique requirement if the failure is not corrected within four hours.

(4) A groundwater system that fails to conduct the disinfectant monitoring required under subsection (c) of this section commits a monitoring violation.

(5) A groundwater system that fails to report the results of the disinfectant monitoring required under subsection (c) of this section commits a reporting violation.

(6) A groundwater system that fails to issue a required public notice or certify that the public notice has been performed commits a public notice violation.

(f) Public notification. A groundwater system that commits a treatment technique, monitoring, or reporting violation as identified in this section must notify its customers of the violation in accordance with the requirements of §290.122 of this title (relating to Public Notification).

§290.119. Analytical Procedures.

(a) Acceptable laboratories. Samples collected to determine compliance with the requirements of this subchapter shall be analyzed at certified or approved laboratories.

(1) Samples used to determine compliance with the maximum contaminant levels, and action level requirements of this subchapter must be analyzed by a laboratory certified by the executive director in accordance with Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). These samples include:

(A) compliance samples for SOCs;

(B) compliance samples for VOCs;

(C) compliance samples for inorganic contaminants;

(D) compliance samples for radiological contaminants;

(E) compliance samples for microbial contaminants;

(F) compliance samples for TTHM;

(G) compliance samples for HAA5;

(H) compliance samples for chlorite;

(I) compliance samples for bromate; and

(J) compliance samples for lead and copper.

(2) Samples used to determine compliance with the treatment technique requirements and MRDLs of this subchapter must be analyzed by a laboratory approved by the executive director. These samples include:

(A) compliance samples for turbidity treatment technique requirements;

(B) compliance samples for the chlorine MRDL;

(C) compliance samples for the chlorine dioxide MRDL;

(D) compliance samples for the combined chlorine (chloramine) MRDL;

(E) compliance samples for the disinfection by-product precursor treatment technique requirements, including alkalinity, total organic carbon, and specific ultraviolet absorbance;

(F) samples used to monitor chlorite levels at the point of entry to the distribution system; and

(G) samples used to determine pH.

(3) Non-compliance tests, such as control tests taken to operate the system, may be run in the plant or at a laboratory of the system's choice.

(b) Acceptable analytical methods. Methods of analysis shall be as specified in 40 Code of Federal Regulations (CFR) or by any alternative analytical technique as specified by the executive director and approved by the Administrator under 40 CFR §141.27. Copies are available for review in the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. The following National Primary Drinking Water Regulations set forth in Title 40 CFR are adopted by reference:

(1) section 141.21(f) for microbiological analyses;

(2) section 141.74(a)(1) for turbidity analyses;

(3) section 141.23(k) for inorganic analyses;

(4) section 141.24(e), (f), and (g) for organic analyses;

(5) section 141.25 for radionuclide analyses;

(6) section 141.131(a) and 141.131(b) for disinfection by-product methods and analyses;

(7) section 141.131(c) for disinfectant analyses other than ozone, and 141.74(b) for ozone disinfectant;

(8) section 141.131(d) for alkalinity analyses, bromide and magnesium, total organic carbon analyses, specific ultraviolet absorbance analyses, and pH analyses; and

(9) section 141.89 for lead and copper analyses and for water quality parameter analyses that are performed as part of the requirements for lead and copper.

(c) The definition of detection contained in 40 CFR §141.151(d) is adopted by reference.

§290.121. Monitoring Plans.

(a) Applicability. All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location.

(b) Monitoring plan requirements. The monitoring plan shall identify all sampling locations, describe the sampling frequency, and specify the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements of this subchapter.

(1) The monitoring plan shall include information on the location of all required sampling points in the system. Required sampling locations for regulated chemicals are provided in §290.106 of this title (relating to Inorganic Contaminants), §290.107 of this title (relating to Organic Contaminants), §290.108 of this title (relating to Radionuclides Other than Radon), §290.109 of this title (relating to Microbial Contaminants), §290.110 of this title (relating to Disinfectant Residuals), §290.111 of this title (relating to Surface Water Treatment), §290.112 of this title (relating to Total Organic Carbon (TOC)), §290.113 of this title (relating to Stage 1 Disinfection By-products (TTHM and HAA5)), §290.114 of this title (relating to Other Disinfection By-products (Chlorite and Bromate)), §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)), §290.116 of this title (Relating to Groundwater Corrective Actions and Treatment Techniques), §290.117 of this title (relating to Regulation of Lead and Copper), and §290.118 of this title (relating to Secondary Constituent Levels).

(A) The location of each sampling site at a treatment plant or pump station must be designated on a plant schematic. The plant schematic must show all water pumps, flow meters, unit processes, chemical feed points, and chemical monitoring points. The plant schematic must also show the origin of any flow stream that is recycled at the treatment plant, any pretreatment that occurs before the recycle stream is returned to the primary treatment process, and the location where the recycle stream is reintroduced to the primary treatment process.

(B) Each entry point to the distribution system shall be identified in the monitoring plan as follows:

(i) a written description of the physical location of each entry point to the distribution system shall be provided; or

(ii) the location of each entry point shall be indicated clearly on a distribution system or treatment plant schematic.

(C) The address of each sampling site in the distribution system shall be included in the monitoring plan or the location of each distribution system sampling site shall be designated on a distribution system schematic. The distribution system schematic shall clearly indicate the following:

(i) the location of all pump stations in the distribution system;

(ii) the location of all ground and elevated storage tanks in the distribution system; and

(iii) the location of all chemical feed points in the distribution system.

(D) The system must revise its monitoring plan if changes to a plant or distribution system require changes to the sampling locations.

(2) The monitoring plan must include a written description of sampling frequency and schedule.

(A) The monitoring plan must include a list of all routine samples required on a daily, weekly, monthly, quarterly, annual, or less frequent basis and identify the sampling location where the samples will be collected.

(B) The system must maintain a current record of the sampling schedule.

(3) The monitoring plan must identify the analytical procedures that will be used to perform each of the required analyses.

(4) The monitoring plan must identify all laboratory facilities that may be used to analyze samples required by this chapter.

(5) The monitoring plan shall include a written description of the methods used to calculate compliance with all maximum contaminant levels, maximum residual disinfectant levels, and treatment techniques that apply to the system.

(6) The monitoring plan shall include any groundwater source water monitoring plan developed under §290.109(c)(4) of this title (relating to Microbial Contaminants) to specify well sampling for triggered coliform monitoring.

(7) The monitoring plan shall include any initial distribution system evaluation compliance documentation required by §290.115(c)(5) of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5)). The monitoring plan must be revised to show Stage 2 sample sites by the date shown in Figure: 30 TAC §290.115(a)(2) titled "Date to Start Stage 2 Compliance."

(8) The monitoring plan shall include any raw surface water monitoring plan required under §290.111 of this title (relating to Surface Water Treatment).

(c) Reporting requirements. All public water systems shall maintain a copy of the current monitoring plan at each treatment plant and at a central location. The water system must update the monitoring plan when the water system's sampling requirements or protocols change.

(1) Public water systems that treat surface water or groundwater under the direct influence of surface water must submit a copy of the monitoring plan to the executive director upon development and revision.

(2) Public water systems that treat groundwater that is not under the direct influence of surface water or purchase treated water from a wholesaler must develop a monitoring plan and submit a copy of the monitoring plan to the executive director upon request.

(3) All water systems must provide the executive director with any revisions to the plan upon request.

(d) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to submit an administratively complete monitoring plan by the required date or fails to submit updates to a plan when required commits a reporting violation.

(2) A public water system that fails to maintain an up-to-date monitoring plan commits a monitoring violation.

(e) Public notification. A system that commits a violation described in §290.122(d) of this title (relating to Public Notification) shall notify its customers of the violation in the next consumer confidence report that is issued by the system.

§290.122. Public Notification.

(a) Public notification requirements for acute violations. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant limit (MCL), maximum residual disinfectant level (MRDL), or treatment technique violation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that pose an acute threat to public health include:

(A) a violation of the acute MCL for microbial contaminants as defined in §290.109(f)(1) of this title (relating to Microbial Contaminants);

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically:

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters; or

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system; or

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent ready of 1.0 NTU;

(C) a violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) of this title (relating to Inorganic Contaminants);

(D) a violation of the acute MRDL for chlorine dioxide as defined in §290.110(f)(5)(A) or (B) of this title (relating to Disinfectant Residuals);

(E) occurrence of a waterborne disease outbreak;

(F) Detection of *E. coli* or other fecal indicators in source water samples as specified in §290.109(b)(2) of this title (relating to Microbial Contaminants); and

(G) other violations deemed by the executive director to pose an acute risk to human health.

(2) The initial acute public notice and boil water notice required by this subsection shall be issued as soon as possible, but in no case later than 24 hours after the violation is identified. The initial public notice for an acute violation shall be issued in the following manner.

(A) The owner or operator of a water system with an acute microbiological or turbidity violation as described in paragraph (1)(A) or (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(B) The owner or operator of a community water system shall furnish a copy of the notice to the radio and television stations serving the area served by the public water system.

(C) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area is not served by a daily newspaper of general circulation, notice shall instead be issued by direct delivery or by continuous posting in conspicuous places within the area served by the system.

(D) The owner or operator of a noncommunity water system shall issue the notice violation by direct delivery or by continuously posting the notice in conspicuous places within the area served by the water system.

(E) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a water system required to issue an initial notice for an acute MCL or treatment technique violation shall issue additional notices. The additional public notices for acute violations shall be issued in the following manner.

(A) Not later than 45 days after the violation, the owner or operator of a community water system shall notify persons served by the system using mail (by direct mail or with the water bill) or hand delivery. The executive director may waive mail or hand delivery if it is determined that the violation was corrected within the 45-day period. The executive director must make the waiver in writing and within the 45-day period.

(B) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists.

(C) If the owner or operator of a noncommunity water system issued the initial notice by continuous posting, posting must continue for as long as the violation exists and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the acute violation. This notice must be issued in the same manner as the original notice was issued.

(5) Copies of all notifications required under this subsection must be submitted to the executive director within ten days of its distribution.

(b) Public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section;

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability);

(C) failure for a groundwater system to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title; or

(D) failure to perform any 3 months of raw surface water monitoring as required by §290.111(b) of this title or request bin classification from the executive director under §290.111(c)(3)(A) of this title; or

(E) other violations deemed appropriate by the executive director that pose a non-acute risk to human health.

(2) The initial public notice for any violation identified in this subsection must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by:

(i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i) of this subparagraph. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.) Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g., apartment building owners or large private employers); continuous posting in conspicuous public places within the area served by the system or on the Internet; or delivery to community organizations.

(B) The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the system.

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by direct delivery, for as long as the violation exists.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the violation. This notice must be issued in the same manner as the original notice was issued.

(c) Public notification requirements for other violations, variances, exemptions. The owner or operator of a public water system who fails to perform monitoring required by this chapter, fails to comply with a testing procedure established by this chapter, or is subject to a variance or exemption granted under §290.102(b) of this title shall notify persons served by the system. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification as described in this section include:

(A) exceedance of the secondary constituent levels (SCL) for fluoride ;

(B) failure to perform monitoring or reporting required by this subchapter;

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter;

(D) operating under a variance or exemption granted under §290.102(b) of this title; and

(E) failure to maintain records on recycle practices as required by §290.46(f)(3)(C)(iii) of this title.

(2) The initial public notice issued pursuant to this section shall be issued within three months of the violation or the granting of a variance or exemption. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area served by the public water system is not served by a daily newspaper of general circulation, the notice shall instead be published in a weekly newspaper of general circulation serving the area. If the area is not served by a either a daily or weekly newspaper of general circulation, notice shall instead be given by direct delivery or by continuous posting in conspicuous places within the area served by the system.

(B) The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the system.

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue repeat notices at least once every 12 months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists or variance or exemption remains in effect. Repeat public notice may be included as part of the Consumer Confidence Report.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the violation. This notice must be issued in the same manner as the original notice was issued.

(d) Each public notice must conform to the following general requirements.

(1) The notice must contain a clear and readily understandable explanation of the violation or situation that lead to the notification. The notice must not contain very small print, unduly technical language, or other items that frustrate the purpose of the notice.

(2) If the notice is required for a specific event, it must state when the event occurred.

(3) For notices required under subsections (a), (b), or (c)(1)(A) of this section, the notice must describe potential adverse health effects.

(A) For MCL, MRDL, or treatment technique violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 Code of Federal Regulations (CFR) Subpart Q, Appendix B, in addition to any language required by the executive director.

(B) For fluoride SCL violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR §141.208, in addition to any language required by the executive director.

(C) For failure to perform any 3 months of raw surface water monitoring or request bin classification from the executive director, the notice must contain the mandatory federal contaminant specific language contained in 40 CFR §141.211(d)(1) and 40 CFR §141.211(d)(2), respectively, in addition to any language required by the executive director.

(D) The notice must describe the population at risk, especially subpopulations particularly vulnerable if exposed to the given contaminant.

(4) The notice must state what actions the water system is taking to correct the violation or situation, and when the water system expects to return to compliance.

(5) The notice must state whether alternative drinking water sources should be used, and what other actions consumers should take, including when they should seek medical help, if known.

(6) Each notice must contain the telephone number at which consumers may contact the owner, operator, or designee of the public water system for additional information concerning the notice.

(7) Where appropriate, the notice must be multilingual.

(8) The notice shall include a statement to encourage the notice recipient to distribute the public notice to the other persons served.

(9) Systems with variances or exemptions must notify in accordance with 40 CFR §141.205(b).

(e) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

(f) Proof of public notification. A copy of any public notice required under this section must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Each proof of public notification must be accompanied with a signed Certificate of Delivery.

(g) Notice to consecutive systems. A public water system that is required to notify its customers must also provide a copy of the notification to any public water systems that purchase or otherwise receive water from it in the same manner in which they inform their customers. Each public water system that is affected by the subject of the notification is responsible for notification to its own customers.

(h) Notices given by the executive director. The executive director may give the notice required by this section on behalf of the owner and operator of the public water system following the requirements of this section. The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(i) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the executive director may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the executive director for limiting distribution of the notice must be granted in writing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706552
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: January 9, 2008
Proposal publication date: August 10, 2007
For further information, please call: (512) 239-6087

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30 TAC §290.111

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The repeal implements TWC, §§5.102, 5.103, 5.105, THSC, §341.031, and §341.0315.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §§290.272, 290.273, 290.275

STATUTORY AUTHORITY

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26;and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105, THSC, §341.031, and §341.0315.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.210

The Comptroller of Public Accounts (Comptroller) adopts new §5.210, providing for the administration, maintenance, modification, and operation of the Uniform Statewide Accounting System, without changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8095).

Government Code, Chapter 2101, Subchapter C, §2101.031, established the Uniform Statewide Accounting Project in the Comptroller's office and included all components of the uniform statewide accounting system established by the legislature. The Comptroller has developed and promulgated the following components of the Uniform Statewide Accounting System: the Human Resources Information System for higher education, the Statewide Property Accounting System, the Standardized Payroll/Personnel Reporting System, the Texas Identification Number System, and the Uniform Statewide Payroll/Personnel System. House Bill 3106, 80th Legislature, 2007, requires enterprise resource planning to be added to and in conjunction with the Uniform Statewide Accounting System and gives authority to the Comptroller to administer and govern enterprise resource planning as a part of the Comptroller's authority regarding the Uniform Statewide Accounting System as contained in Government Code, Chapter 2101. House Bill 3106 makes certain amendments to Government Code, Chapter 2101, allowing the Comptroller to require state agencies to include enterprise resource planning in conjunction with the Uniform Statewide Accounting System and any individual enterprise resource planning systems used by such state agencies so that they are compatible with the Uniform Statewide Accounting System and, if not, to direct agencies to modify, delay, stop, or replace any such non-compatible systems.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, Chapter 2101, which authorizes the Comptroller to adopt rules to efficiently and effectively administer these provisions.

The new section implements Government Code, §2101.035.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
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Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER P. ENTERPRISE RESOURCE PLANNING

34 TAC §5.300

The Comptroller of Public Accounts (Comptroller) adopts new §5.300, concerning monitoring and implementation of enterprise resource planning systems, with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8096).

House Bill 3106, 80th Texas Legislature, 2007, provides for enterprise resource planning to be included in the Uniform Statewide Accounting System and gives authority to the Comptroller to administer and manage enterprise resource planning in Government Code, Chapter 2101. House Bill 3106 makes certain amendments to Government Code, Chapter 2101, allowing the Comptroller to require state agencies to adopt standards for the implementation and modification of state agency enterprise resource planning in individual enterprise resource planning systems so that those individual internal accounting/payroll systems are compatible with the Uniform Statewide Accounting System and to direct state agencies to modify, delay, or stop implementation of non-compatible systems.

The new rule as adopted is changed to correct reference to the formal title of the state accounting system and to correct a grammatical error.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, Chapter 2101, which authorizes the Comptroller to adopt rules to efficiently and effectively administer these provisions.

The new sections implement Government Code, §§2101.001, 2101.031, 2101.036, and 2101.037(a).

§5.300. Monitoring and Implementation of Enterprise Resource Planning Systems.

(a) The purpose of this section is to provide a procedure for the comptroller to monitor compatibility of individual accounting and payroll systems for compliance with the Uniform Statewide Accounting System including enterprise resource planning components and compliance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "State agency" means a department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Education Code, §61.003, other than a public junior college or community college.

(2) "State funds" means funds of the state held by state agencies regardless of whether or not such funds are inside or outside of the State Treasury.

(3) "Enterprise resource planning" means and includes the administration of a state agency's general ledger, accounts payable, accounts receivable, budgeting, inventory, asset management, billing, payroll, projects, grants: administration of human resources, including administration of performance measures, time spent on tasks, and other personnel and labor issues; and administration of procurement.

(4) "Uniform Statewide Accounting Project" has the meaning assigned by Government Code, Chapter 2101, and includes the components of the Uniform Statewide Accounting System as previously promulgated and adopted by the comptroller.

(5) "Project director" means the person appointed by the comptroller pursuant to Government Code, Chapter 2101, to administer the Uniform Statewide Accounting Project.

(6) "Implementation" means the upgrade of software versions or the addition of new modules or functionality to software or systems

(7) "System" means an internal enterprise resource planning, accounting or payroll system used by a state agency.

(c) In order to ensure the Uniform Statewide Accounting Project includes enterprise resource planning the comptroller shall engage in the procedures that follow in this subsection.

(1) Each state agency implementing individual systems shall submit information to the project director describing and detailing the project so as to allow the project manager to coordinate and consult with the submitting agency.

(2) After reviewing the information provided in paragraph (1) of this subsection, the project director may reasonably request the submitting state agency to provide additional information describing and detailing the project to allow the project director to fully understand the project and to aid in coordination and consultation on the project.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §5.301

The Comptroller of Public Accounts (Comptroller) adopts new §5.301, concerning the enterprise resource planning advisory council, without changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8097).

House Bill 3106, 80th Texas Legislature, 2007, provides for the creation by the Comptroller of an enterprise resource planning council to advise the Comptroller regarding the development of a plan for enterprise resource planning and assisting the Comptroller in reporting to the legislature on the status of enterprise resource planning prior to the beginning of each legislative session. House Bill 3106 makes certain amendments to Government Code, Chapter 2101 by the addition of §2101.040 requiring the Comptroller to create the council to implement the legislative mandate on enterprise resource planning.

We received one comment from a state agency. Following is a summary of the comment received and the response.

The Texas Department of Transportation objected to the composition of the Enterprise Resource Planning Advisory Council because there is not enough representation of large state agencies such as Texas Department of Transportation which thereby prevents Texas Department of Transportation from being a part of the planning process and addressing its special needs. The language objected to is consistent with Government Code, §2101.040, that requires the Enterprise Resource Planning Advisory Council be established and specifies which large state agencies must be members. Since this rule may not exceed the statutory authority, the Comptroller is unable to alter the composition of the Enterprise Resource Planning Advisory Council to include other large state agencies. Notwithstanding the composition of the Enterprise Resource Planning Advisory Council, the Council will consider any and all input from interested and affected state agencies. Notices of all meetings of the Enterprise Resource Planning Advisory Council will be published in the *Texas Register*, and all meetings will be open to all who choose to attend. Therefore, the Comptroller declined to make any change.

The new section is adopted under Government Code, Chapter 2101, which authorizes the Comptroller to adopt rules to efficiently and effectively administer these provisions.

The adopted new section implements Government Code, §2101.040.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.107

The Comptroller of Public Accounts adopts the repeal of §9.107, concerning appraised value limitation and tax credit for certain qualified property, without changes to the proposal as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8098).

A new set of rules, proposed for adoption under new Subchapter F, Limitation on Appraised Value and Tax Credits on Certain Qualified Property, will take its place.

No comments were received regarding adoption of the repeal.

The adoption implements Tax Code, §313.031, which requires the comptroller to adopt forms and rules for the implementation and administration of Tax Code, Chapter 313.

The section implements Tax Code, Chapter 313.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
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SUBCHAPTER F. LIMITATION ON APPRAISED VALUE AND TAX CREDITS ON CERTAIN QUALIFIED PROPERTY

34 TAC §§9.1051 - 9.1058

The Comptroller of Public Accounts adopts new §§9.1051 - 9.1058, concerning the limitation on appraised value and tax credits on certain qualified property created by Tax Code, Chapter 313, with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8102).

The new sections will be under new Subchapter F, Limitation on Appraised Value and Tax Credits on Certain Qualified Property. The new sections are being adopted to replace the current §9.107, which is being repealed. The new sections implement House Bill 2994, House Bill 1470, House Bill 3732, House Bill 3430, and House Bill 3693, 80th Legislature, 2007, to clarify issues related to application and qualification, and to adopt by reference application forms for the limitation on appraised value and the tax credits.

Section 9.1051 defines certain terms used in new Subchapter F, such as qualified property, application review period, and applicant. New §9.1052 adopts by reference forms entitled Application for Appraised Value Limitation on Qualified Property (Form 50-296) and Application for Tax Credit on Qualified Property (Form 50-300) by reference. Section 9.1053 concerns requirements and restrictions, governs extension of the application review period, provision of supplemental and amended information, and sets forth requirements for the primary activity of a project and the applicant's use of the property. Section 9.1054 governs the applicant and action on applications, including provisions setting forth the application date for certain qualifying time periods, the minimum standards for completion, the actions the governing body must take upon receiving an application, requiring specific information on the application, specifying the types of information that may be amended and types of information that may be supplemented, and addressing the time period in which the comptroller must issue a recommendation when an application is amended. Section 9.1055 sets forth requirements for the written agreement between the school district and the taxpayer to limit the appraised value of certain property, including provisions requiring the school district to send the comptroller and appraisal districts a copy of the agreement, setting out provisions that may be included in the agreement and provisions that must be contained in the agreement, requiring the reporting of additions of property to the agreement to the comptroller and appraisal districts, setting out the requirements for an agreement to add property, and prohibiting amendment of the agreement to extend the qualifying time period. Section 9.1056 concerns the tax credit to which an applicant may be entitled and states how the credit is to be calculated. Section 9.1057 concerns the comptroller's duties under Tax Code, Chapter 313, including provisions permitting the comptroller to require certain information from the school district, setting forth the time period in which the information must be provided, requiring applicants to promptly submit certain information required to complete a biennial report assessing the progress of each agreement; addresses the calculation of the 60-day time period for issuing the comptroller's recommendation; stating that the comptroller will promptly notify the applicant and school district if an application is incomplete; governing the submission of certain information requested by the comptroller, and providing that information not submitted in a timely manner may not be considered in the comptroller's recommendation or economic impact evaluation. Section 9.1058 includes miscellaneous provisions, including provisions requiring recipients of the limitation to notify certain parties of certain changes and the chief appraiser to maintain a list of property subject to the limitation stating that certain changes in district characteristics do not affect certain terms in the agreement, and that the comptroller may promulgate guidelines to further implement Tax Code, Chapter 313.

Comments submitted by Mr. James Wester recommended that §9.1053(d) include a reference to the comptroller. The agency agreed and made the change. The commenter suggested that §9.1054(b)(1)(F) require applicants intending to request a job waiver to submit, with the application, supporting documentation justifying the waiver of minimum job requirements. The agency agreed and the change was made. The commenter suggested that §9.1054(h) and (j) be revised to provide the school district with more time to act after receiving the comptroller's recommendation. The agency disagreed and did not make the change because the provision is intended to encourage applicants to file complete applications. The commenter suggested inclusion of a notice to the applicant and the school district that the application is complete. The agency disagreed and did not make the change. An applicant has filed a complete application if the ap-

plicant has not received a notice that the application is incomplete, however, the agency addressed the commenter's concern by adding a provision requiring prompt notification to an applicant that the application is not complete.

Mr. Michael Chrobak, Governor's Office of Economic Development and Tourism, commented that §9.1051 should define the terms "qualified investment" and "appraised value." The agency agreed and revised the rule accordingly. The commenter recommended that §9.1054(e) include the estimated appraised value of rendered property arising from the value of the proposed investment. The agency disagreed because the specific change was unnecessary, but clarified the information that is being requested on the form. The commenter suggested revising §9.1054(f) to replace the reference to September 3 with a generic term. The agency disagreed because the specific date provides the public with more information about the application process. The commenter recommended clarification of §9.1055(d). The agency agreed and made the change.

Mr. Dick Lavine, Center for Public Policy Priorities, requested the inclusion of information on health benefits when referencing wages and employment. The agency agreed and changed the application form and schedule "C" accordingly. The commenter suggested that §9.1055 require the agreement to include a requirement that the applicant's jobs meet the statutory definition of a "qualifying job," specifically coverage by a group health benefit plan and wages equal to at least 110% of the county average weekly wage for manufacturing jobs in the county, throughout the life of the agreement. The agency declined to make the change because the law regarding this issue is not clear and the parties may choose to include in the agreement a provision requiring continuing compliance with the definition of a qualifying job. The commenter recommended amending §9.1055(d) to require the applicant to seek a recommendation from the agency before adding property to an agreement. The agency declined to make the change because the law does not impose this requirement on property added to the agreement. The commenter suggested adding a provision requiring the applicant to submit information that is sufficiently detailed to enable evaluation of continuing compliance with Chapter 313. The agency declined to make the change because the agency is not proposing to adopt the report form that applicants must complete for the biennial report to the Legislature assessing the progress of Chapter 313 agreements. The commenter requested the deletion of language in §9.1058(d) concerning leaseholds and that the limitation application form be changed accordingly. Subsection (d) was deleted because the law regarding this matter is not clear, and therefore, the form need not be amended. The commenter recommended clarification of question six on the limitation application form by clearly stating that qualifying jobs are those that pay at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located. The agency agreed and made the requested change. The commenter suggested revising the limitation application form, question eight, to ask for information verifying that the applicant's qualifying jobs provide health benefits that meet the minimum statutory requirements. The agency agreed and added clarifying language to the application form. The commenter suggested that the limitation and tax credit application forms require applicants to update the schedules as necessary when reporting an amendment to the agreement. The agency agreed, but the change was not necessary because each of the schedules included with the application forms state that applicants are required to submit updated schedules in this circumstance. The agency, however, addressed the comment by improving the visibility of the language on the form that requires updated schedules. The commenter recommended adding the definition of a qualifying job and a request for the total number of permanent full-time new jobs created by the applicant to schedule "C" of the application form. The agency agreed and made the change. The commenter suggested that the same schedule be revised to reflect the statutory requirement that qualifying jobs pay wages that are 110% of the county average wage. The agency agreed and made the change. The commenter suggested adding to the same schedule a request for the number of jobs that provide the health benefits required by Tax Code, §313.021(3)(D). The agency agreed and addressed the comment by adding a citation to Tax Code, §313.021(3). The commenter suggested that the agency gather information from each school district concerning its taxable property value per weighted student in average daily attendance. The agency declined to make the change because this information is available from the Texas Education Agency. The commenter recommended that the agency gather information from each school district concerning financial arrangements between the district and the applicant that provide revenue or in-kind resources because, according to the commenter, the law requires school districts to approve only applications that improve the local public education system. The agency declined to make the change because the agency has not proposed rules or promulgated a form concerning the collection of information for the biennial report to the legislature assessing the progress of each Chapter 313 project.

Moak, Casey & Associates, Mr. Kevin O'Hanlon of O'Hanlon, McCollom & Demerath, and Ms. Debbie Cartwright of Bexar Appraisal District commented that the requirement in §9.1053(a) that an extension of the deadline be granted before the deadline has passed should be deleted. The agency declined to make the change because a deadline that has passed cannot be extended. Deleting the requirement would effectively render the statutory 120 day application review period meaningless. The commenters requested adding the school district to §9.1054(b). The agency agreed and made the change.

Moak, Casey & Associates and Mr. Kevin O'Hanlon of O'Hanlon, McCollom & Demerath commented that §9.1054(f) should be changed to state that the application must be filed, "on or before" September 3, rather than "before" that date, as the subsection currently states. The agency declined to make the change because the deadline would be incorrectly stated. The commenters recommended deleting or, alternatively, replacing the requirement in §9.1053(e) that the applicant use eligible property in the applicant's primary activity with definitions of "placed in the stream of commerce" and "used in connection with," contending that the subsection too narrowly interprets the phrase "used in connection with." The agency disagreed and did not make the change because the agency interprets "in connection with" to mean the property of the person who is engaged in the primary activity but that is not used in the conduct of the primary activity, such as property used for administrative purposes and other support functions that are "connected with" the primary activities listed under Tax Code, §313.024. The commenters suggested that §9.1054(b)(1)(C) be amended to insert the term, "projected" before the word, "employment." The agency agreed and made the change. The commenters suggested that references to the application fee in §9.1054(b)(3) and (d)(1) be deleted because payment of the application fee is purely a local matter. The agency declined to make the change because the application fee is specifically required by

Tax Code, §313.025(a)(1). The commenters recommended that §9.1054(g), (h), and (k) be amended to delete "governing body" and require that the school district take the indicated action. The agency agreed with a portion of the comment. In subsections (g) and (k), "governing body" was replaced by "school district." The phrase "by official action" was deleted from subsection (h), however, "governing body" was not deleted because Tax Code, §313.025(b) requires the "governing body of the school district" to extend the application review period. The commenters requested the deletion of §9.1055 in its entirety. The commenters contend that the agreement is subject only to the discretion of the parties, so the comptroller does not have authority to prescribe any conditions not currently required by state law. The agency disagreed and did not make the change. The agreement is within the scope of the agency's rulemaking authority. Tax Code, §313.031(a)(1), requires the comptroller to, "adopt rules and forms necessary for the implementation and administration" of Tax Code, Chapter 313. Tax Code, §313.027 is entitled Limitation on Appraised Value, Agreement, and all of the provisions in that section, except one, pertain to the agreement. The commenters suggested, alternatively, that §9.1055(c) be changed to read that the "agreement must contain, but is not limited to, the following provisions," instead of "the agreement shall contain the following." The agency agreed and made the change. The commenters stated that §9.1055(d)(1) and (2) should be deleted because the subdivisions are outside the agency's rulemaking authority. The agency disagreed that it does not have authority to adopt rules concerning the agreement because Tax Code, §313.031(a)(1), requires the comptroller to, "adopt rules and forms necessary for the implementation and administration" of Tax Code, Chapter 313. Tax Code, §313.027 concerns the agreement, so the provisions are within the agency's rulemaking authority. The language has, however, been narrowed to require that property added to the agreement meet only the eligibility requirements of Tax Code, Chapter 313. Tax Code, §313.004(3)(A) expresses the legislature's intent that school districts strictly interpret "the criteria and selection guidelines" of Chapter 313. If ineligible property may be added to the agreement after the original limitation has been granted, applicants could be permitted to add types of property to the agreement that are outside the scope of Tax Code, Chapter 313. Commenter's interpretation is impermissibly broad. The agency disagreed that it does not have authority to require information concerning property added to the agreement and did not make the requested change. House Bill 3430, House Bill 3693, and House Bill 2994, 80th Legislature, 2007, read together, require the comptroller to assess the progress of each Chapter 313 project. The progress of the project cannot be assessed without information concerning property added to the agreement; therefore, the provision is within the agency's rulemaking authority, which is provided by Tax Code, §313.031(a)(1). The commenters suggested that §9.1057(b) be changed to provide for a primary time period of 20 working days and an extension of 10 working days. The agency agreed and made the change. The commenters requested a provision stating that the school district may submit additional information about the impact of the limitation on school facilities or school finance and would require the agency to transmit the economic analysis in written and electronic form as soon as practicable. The agency agreed and made the suggested change, however, a provision was added stating that comptroller may consider the information in the development of the recommendation and economic analysis. The commenters stated that reports by the appraisal district should be incorporated into (the) self-report process. The agency declined to make the change because the provision does not prevent the agency from integrating the appraisal district report into the self-report process. The commenters suggested that schedule "C" should not require applicants to project wage increases necessary to keep up with the 110% requirement for 10 years. The agency did not make the change because the schedule does not require this projection.

Ms. Debbie Cartwright of Bexar County Appraisal District agreed with the portions of the rules that require school districts to send the appraisal district copies of the applications, schedules, and other supporting information, that copies of the limitation agreement be submitted to the appraisal districts, and agreed that the comptroller should receive information concerning the type, value, and identification of property subject to value limitations. The commenter requested that §9.1054(b) be changed to state that school districts are not required to consider an incomplete application. The agency agreed and made the change. The commenter stated that a provision should be added to §9.1057 requiring that the information submitted to the comptroller for the biennial report to the legislature assessing the progress of Chapter 313 projects be sent to the school districts and appraisal districts. The agency declined to make the change because an appraisal district that needs the information may request this information through a public information request. The commenter suggested that §9.1057(b) be revised by replacing the 14-day extension for providing additional information with a provision stating that amount of time is determined on a case-by-case basis. The agency agreed that the time period should be extended and made the change, but determined that it is administratively impracticable to determine the time period on a case-by-case basis. The commenter recommended permitting school districts and appraisal districts to provide input regarding applications and the economic impact evaluation. The agency agreed and revised the rule to provide that information may be submitted and that the agency may, but is not required to, consider it. The commenter requested that school districts and appraisal districts be permitted to provide input to the agency on the application. The agency agreed and made the change. The commenter requested deletion of the requirement on the limitation application form for attachment of a surveyor's certification. The agency revised the application to permit submission of alternate types of evidence of the reinvestment zone boundaries.

Gary Fusfield from Jack County, Texas commented that a multi-million-dollar "retroactive" Tax Abatement agreement that he alleges was adopted may conflict with these proposed rules. The comment did not request a change; therefore a change was not made.

The new sections are adopted under Tax Code, §313.031, which requires the comptroller to adopt forms and rules for the implementation and administration of Tax Code, Chapter 313.

The new sections implement Tax Code, Chapter 313.

§9.1051. Definitions.

Definitions. The following phrases, words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agreement--the written agreement between the governing body of a school district and the property owner to implement a limitation on the appraised value of qualified property, required by Tax Code, §313.027(d).

(2) Applicant--a person or an "affiliated group," as defined in Tax Code, §171.0001, who has applied for a limitation of appraised

value on qualified property as provided by Tax Code, Chapter 313, and is subject to Tax Code, Chapter 171.

(3) Application--the Application for Appraised Value Limitation on Qualified Property, adopted by reference in §9.1052 of this title (relating to Forms).

(4) Application review period--the period of time during which the governing body of a school district is required to consider and approve or disapprove an Application for Appraised Value Limitation on Qualified Property. The application review period begins on the day an Application for Appraised Value Limitation on Qualified Property is filed with a school district and ends on the 120th day after the date on which the application is filed.

(5) Appraised Value--the value of property as defined by Tax Code, §1.04 (8).

(6) Qualified investment--property that meets the requirements of Tax Code, §313.021(1)

(7) Qualified property--property that meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, or nuclear electric power generation.

(8) Tax credit settle-up--the process by which tax credit amounts earned by a Chapter 313 recipient which are not paid during the value limitation period are paid following the expiration of the value limitation.

§9.1052. Forms.

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296); and

(2) Application for Tax Credit on Qualified Property (Form 50-300).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's web site, at http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html. Copies may also be requested by calling our toll-free number, (800) 252-9121.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

§9.1053. Requirements and Restrictions.

(a) Extension of the Application Review Period. If the governing body of a school district with which an owner has filed an application finds that the application review period is insufficient to permit adequate consideration of the application, before the end of the application review period the governing body may extend the application review period for a specified time period.

(b) An extension of the application review period does not extend a time period established by this title.

(c) The school district shall immediately report each extension to the comptroller and each appraisal district that appraises property subject to the extension.

(d) All supplemental and amended information provided to the school district and comptroller shall be in the same format, style, and presentation used in the application and attached documentation.

(e) In addition to meeting each eligibility and qualification requirement set out in this title and Tax Code, Chapter 313, the primary activity of an applicant's project must meet the eligibility criteria provided by Tax Code, §313.024(b)(1) - (7) and the applicant must use the property in connection with an eligible activity described by Tax Code, §313.024(b)(1) - (7).

§9.1054. Application, Action on Application.

(a) Application Date. An application may be filed at any time. An applicant who intends the qualifying time period to begin on January 1 of the year following the year the application is filed, however, must file the application and all required accompanying documentation before September 3 of the year preceding the year in which the applicant proposes the qualifying time period to begin.

(b) Neither the school district nor the comptroller are required to consider applications that do not meet minimum requirements. Minimum requirements include:

(1) each question, schedule, and request for information concerning the following items is answered in detail and conforms to reasonable standards for application form and content set by the comptroller:

(A) dollar value of investment;

(B) proposed wages and benefits;

(C) projected employment;

(D) a property description;

(E) qualifying time period;

(F) notification of intent to request a waiver of minimum job requirements and documentation of industry standards sufficient to support the waiver, if granted; and

(G) other items of relevant information as required by the comptroller.

(2) it is signed by the applicant or the applicant's authorized agent; and

(3) it is accompanied by the application fee established by the governing body of the school district.

(c) Each document required by the application must be submitted during the required time frame.

(d) Immediately upon electing to consider the application the school district shall:

(1) forward to the comptroller the application, including the required schedules; the documentation that accompanied the application and proof of payment of the application fee; and

(2) forward to each appraisal district that appraises property subject to the application one copy of the application, schedules, and attached documentation.

(e) The applicant shall describe with specificity the qualified investment and qualified property that the applicant proposes to build or install, including sound, good faith estimates of the cost and value of proposed investment. The information must be sufficient to show that the real and personal property identified in the application as qualified property meets the criteria established by Tax Code, §313.021(2) and that the minimum required qualified investment amount is made during the qualifying time period.

(f) If the application is filed before September 3 and is approved during that tax year, the qualifying time period begins on January 1 of the following tax year. If the governing body extends the application review period, the qualifying time period specified in the application begins on January 1 of the first tax year following the approval of the application.

(g) Amended application--a school district may at any time during the application review process permit an applicant to amend the application to provide changes in investment, wage, employment, a property description, or a qualifying time period to replace that submitted on the original application.

(h) If the school district's governing body permits an applicant to amend the application at any time after the 60th day of the application review period, the governing body shall extend the application review period by a number of days equal to the difference between 60 and the number of days of the application review period that had passed when the application was received. For example, if the application was amended on the 85th day of the application review period, the governing body is required to extend the application review period for 25 additional days.

(i) The school district shall immediately send each amended application and each item of attached documentation to the comptroller. As soon as practicable after receiving an amended application, the school district shall send the amended application and attached documentation to each appraisal district that appraises property proposed to be subject to a limitation on appraised value.

(j) For purposes of the comptroller's recommendation only, an amended application is considered a new application and the 60-day time period within which the recommendation must be issued will be calculated in the manner provided by §9.1057(d) of this title (relating to Recommendation, Evaluation, and Reports by Comptroller).

(k) Supplementing the application--a school district may permit an applicant to supplement the original application with certain information that was unavailable prior to the filing date and that will be used to verify that the property meets the requirements of Tax Code, Chapter 313. Changes in information concerning the proposed investment, property description, wages, employment, or a change in the qualifying time period may not be provided as supplemental information. Changes in the proposed investment, property description, wages, employment information, and the qualifying time period shall be submitted through an amended application. For example, an application may be supplemented to provide reinvestment zone descriptions, maps and reinvestment zone guidelines and criteria that were not available before the application was filed, while a change in the qualifying time period must be submitted on an amended application.

(l) The school district shall immediately forward to the comptroller and each appraisal district in which property that is subject to the limitation will be located all supplemental information that the district receives.

(m) An application that was filed before January 1, 2008, is not subject to subsection (h) of this section until July 1, 2008. This subsection expires on July 2, 2008.

§9.1055. Agreement to Limit Appraised Value.

(a) As soon as practicable after execution of the agreement with the property owners, the school district must submit to the comptroller and to all appraisal districts that appraise property described in the agreement a copy of the agreement between the school district and the property owner for the appraised value limitation required by Tax Code, §313.027 and all accompanying documents and exhibits.

(b) The agreement may include authorization for the company to replace property specified in the original agreement, provided that the company reports investment, value, and employment information related to replacement property added to the agreement to the school board, the comptroller, and to each appraisal district with the same format, style, and presentation used for the original application.

(c) The agreement shall contain, but is not limited to, the following minimum provisions:

(1) a requirement that the recipient meet minimum eligibility requirements throughout the value limitation and tax credit settle-up periods. Minimum eligibility requirements shall meet or exceed the Tax Code, Chapter 313 requirements for qualified investment and Tax Code, §313.021(3) and §313.024(d) requirements for employment;

(2) the Texas Taxpayer Identification Number assigned by the comptroller to the company entering into the agreement or the Texas Taxpayer Identification Number of its reporting entity. The number included in the agreement shall match the number listed on the application; and

(3) a provision that states the amount of the limitation is based on the limitation amount for the category that applies to the school district on the effective date of the agreement, as set out by Tax Code, §313.022(b) or §313.052.

(d) By official action of the governing body of the school district, the agreement may be amended to include, in the appraised value limitation, qualified property that was not specified in the original agreement, provided that the company reports to the school board, the comptroller, and to each appraisal district, in the same format, style, and presentation as the original application, all relevant investment, value, and employment information that is related to the additional property. An agreement amended as permitted by this title shall:

(1) require that all property added by amendment be eligible property as defined by Tax Code, §313.024;

(2) clearly distinguish the property, investment, and employment information added by amendment from the property, investment, and employment information in the original agreement; and

(3) define minimum eligibility requirements for the recipient of limited value.

(e) An agreement may not be amended to extend the value limitation time period.

§9.1056. Tax Credit.

An applicant is entitled to a credit for part of the maintenance and operations property taxes that were paid to a school district for each tax year during the qualifying time period in an amount that is equal to the difference between the amount of maintenance and operations tax that was actually paid on the qualified property and the amount of maintenance and operations tax that would have been paid based on the appraised value limitation to which the school district agreed, provided that the applicant meets the requirements of Tax Code, Chapter 313, Subchapter D.

§9.1057. Recommendation, Evaluation, and Reports by Comptroller.

(a) Recipients of property value limitations shall promptly submit to the comptroller information that is required to complete the comptroller's biennial report assessing the progress of each agreement. The comptroller will promulgate a form on which the required information shall be submitted.

(b) At any time during the application review period, the comptroller may request information from the school district or applicant that is reasonably necessary to complete the recommendation or

economic impact evaluation. This information may include, but is not limited to, information from the school district that is related to the estimated effect of tax base changes on a district's state aid through the Foundation School Program and information related to local school facilities' needs. The school district or applicant shall provide the requested information to the comptroller within 20 working days of the date of the request. On request of the school district or the applicant, the comptroller may extend the deadline for providing additional information for a period of not more than 10 working days. The school district and the appraisal district may submit additional information concerning school facilities or the school finance impact on school district operations during the term of the agreement. The comptroller may include this information in its analysis. The comptroller shall transmit the results of economic analyses as soon as practicable to the district in written or electronic form before the 61st day after the date the comptroller gets the application.

(c) For purposes of the recommendation required by Tax Code, §313.025(d), the 60-day period within which a recommendation must be submitted begins on the day the comptroller receives a substantially complete application and other documentation, forwarded pursuant to §9.1054 of this title (relating to Application, Action on Application).

(d) If one or more of the application schedules or the qualifying time period is amended, the comptroller will consider the application as a new application only for purposes of issuing the recommendation required by Tax Code, §313.025(d). If the comptroller receives an application amended in this manner any time after the 60th day of the application review period, the time period for submitting the recommendation is extended by a number of days that equals the sum of the remaining days in the application review period plus the difference between 60 and the number of days of the application review period that had passed when the amended application was filed with the school district. The extended time period provided by this subsection shall match the number of days for which the application review period was extended as required by §9.1054(h) of this title.

(e) As soon as practicable after receipt, the comptroller will review each forwarded application to determine if the application and accompanying documentation is complete. If the review determines that an application is not substantially complete or is missing documentation that is material to the comptroller's recommendation or economic evaluation, the comptroller will promptly notify the school district and applicant.

(f) Supplemental application information, amended application information, and additional information requested by the comptroller shall be promptly forwarded to the comptroller. Additional information concerning investment, property value, property description, employment, and the qualifying time period that is not provided to the comptroller in a timely manner may not be included in the comptroller's recommendation, economic impact evaluation, or report. Supplemental information shall be in the same format, style, and presentation as the application.

(g) An amended application and all attached documentation shall immediately be forwarded to the comptroller in the manner specified in §9.1055(d) of this title (relating to Agreement to Limit Appraised Value).

(h) The comptroller may not consider an application more than one year after the application's filing date unless the comptroller agrees to do so in writing.

§9.1058. Miscellaneous Provisions.

(a) A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the comptroller, school district, and appraisal district in writing of any change in address or other contract information for the owner of the property subject to the limitation agreement for the purposes of Tax Code, §313.032. An assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

(b) Property list by chief appraiser. Before October 1 of each year, the chief appraiser shall compile and send to the comptroller a list of properties that are subject to a limitation on appraised value under Tax Code, Chapter 313. The comptroller may promulgate a form to facilitate the annual collection of this information from appraisal districts. The market value of each property on the list shall include separately listed taxable real and personal property owned by a person at one site. The list shall include, at a minimum, the appraisal district name, the name of any other appraisal district that appraises the property, the appraisal district number that the comptroller has assigned, the name of each school district that taxes the property, each school district number that the education agency has assigned, each account number that the appraisal district has assigned, each taxpayer name, the market value of the taxable real and personal property that the taxpayer owns at that site, any value exempted due to pollution control or other exemption, the taxable value of the taxable real and personal property that the taxpayer owns at that site, the tax year to which the listed information pertains, and the name and telephone number of a person at the appraisal district who is responsible for the information that is contained in the list.

(c) Changes in property values, population data, or strategic investment area designations that occur after an agreement is executed do not affect the job requirements or value limitation in the agreement.

(d) The comptroller may promulgate guidelines for the administration of Tax Code, Chapter 313.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2007.

TRD-200706547
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: January 9, 2008
Proposal publication date: November 9, 2007
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.1, concerning Definitions, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7008), and will not be republished.

The amendments are to the definitions of "active," "background investigation," "basic licensing course," "chief administrator," "contract jail," "endorsement," "experience," "hearings examiner," "jailer," "license," "reserve," "successful completion," and "training hours." The definitions were amended for clarification. Subsection (b) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking Authority.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706577
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.19, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7011), and will not be republished.

Section 211.19(d)(1) is amended to require law enforcement agencies to keep on file signed and dated printouts of applications and forms submitted via TCLEDDS, and in a format readily accessible to the commission. Subsection (g) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.153, Reports From Agencies and Schools.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706578
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.23

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.23, concerning Date of Licensing or Certification, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7012), and will not be republished.

Section 211.23 is amended by striking "or certification" from the title. The amendments to subsections (a) and (b) have been made to clarify the rule stating the date of a licensee's official license date through the Commission. Subsection (d) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking Authority, §1701.301, License Required, §1701.302, Certain Elected Law Enforcement Officers; License Required, §1701.303, License Application; Duties of Appointing Entity, and §1701.307, Issuance of License.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706579
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.25

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.25, concerning Date of Appointment, without changes to the pro-

posed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7012), and will not be republished.

The amendment sets out the procedure for which the date of appointment of a peace officer or county jailer is determined for calculating service time and for proficiency certificates. Specifically, subsections (a) and (b) are eliminated to provide clarity and guidance for maintaining licensee record accuracy. New subsection (b) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.152, Rules Relating to Hiring Date of Peace Officer.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706580
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.27, concerning Reporting Responsibilities of Individuals, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7013), and will not be republished.

Section 211.27(e) is added to require a report from any licensee who enters the military after licensing and receives a dishonorable discharge. Subsection (f) is amended to reflect the effective date for these changes.

No comments were received regarding this proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.153, Reports From Agencies and Schools.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706581
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §211.28, concerning Responsibility of a Law Enforcement Agency to Report an Arrest of a Peace Officer or County Jailer, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7014), and will not be republished.

Section 211.28 sets out the procedure for which the arrest of a peace officer or county jailer is reported by an arresting agency. Specifically, this rule is created to provide notification to the Commission of the arrest of a peace officer or county jailer if such fact is discovered by an arresting agency.

No comments were received regarding the proposed section.

The new section is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as adopted is in compliance with Texas Occupations Code, §1701.202, Complaints.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706585
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.29, concerning Responsibilities of Agency Chief Administrators, without changes to the proposed text as published in the Octo-

ber 5, 2007, issue of the *Texas Register* (32 TexReg 7014), and will not be republished.

Section 211.29(e) is amended to include TCLEOSE PID number. Subsection (f) is amended by House Bill 2445, which requires the chief administrator of a law enforcement agency to report to the Commission within 7 business days the departure of a licensee that resigned or was terminated. Subsections (i) and (j) require a chief administrator of a law enforcement agency to notify the Commission of their appointment as administrator and to notify the Commission of their departure of that respective position. Subsection (k) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.303, License Application; Duties of Appointing Entity, and amended §1701.452, Employment Termination Report.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706586

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.5, concerning Contractual Training, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7015), and will not be republished.

Section 215.5(a) was amended to identify a propriety training contractor. Subsection (d) was added in order to allow for a distance education contractual provider type and identify the requirements for distance education courses. The inspection requirements of subsection (g)(3) was amended to allow for different types of training providers. The reporting requirements of subsection (g) were also amended to reflect the revised deadline for reporting to the Commission. Subsection (j) is amended to reflect the effective date for these changes.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706587

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §215.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of §215.17, concerning Distance Education, without changes to the proposal as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7017), and will not be republished.

The guidelines for distance education will be incorporated into §215.5, concerning Contractual Training, in order to allow for a distance education contractual provider type.

No comments were received regarding the proposed repeal.

This repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The repeal as adopted is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706588

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7722

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.3 concerning Application for License and Initial Report of Appointment, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7020), and will not be republished.

Subsection (b) is amended to ensure that the rule is compliant with statute language. Subsection (g) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.405 Telecommunicators.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

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Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.7, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7020), and will not be republished.

Amendments were made to subsections (c)(1) and (c)(2) adding language which requires a law enforcement agency to keep on file documentation that complies with §1701.451 of the Texas Occupations Code. Subsection (g) is amended to reflect amendments to the Texas Occupations Code that requires the law enforcement agencies to submit the F-5 Employment Termination Report to the Commission and to the licensee within 7 business days after the date of separation. Subsection (i) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Amended §1701.451, Preemployment Request for Employment Termination Report and Submission of Background Check Confirmation Form, and Amended §1701.452 Employment Termination Report.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706592
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §217.8

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.8, concerning Contesting an Employment Termination Report, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7022), and will not be republished.

This amendment changes subsection (e) by transferring the burden of proof by preponderance of the evidence from the individual requesting a hearing for a correction of report to the chief administrative officer of the law enforcement agency. Subsection (f) amends language from proposal for decision to final order. Subsection (j) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Amended §1701.4525, Request for Correction of Report; Administrative Penalty; Hearing; Appeal.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706593

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 1, 2008

Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.11, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7023), and will not be republished.

Amendments were made to subsection (e) by eliminating language regarding civil process, and placing the language in §217.15 and new subsection (e) to include the legislatively mandated training requirements for police chiefs that is currently located in the Education Code. This amendment would also include a change addressing training for elected and appointed constables. This change is necessary to ensure that Commission rules remain in compliance with statutory requirements. Subsection (o) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.354, Continuing Education for Deputy Constables, and §1701.3545, Initial Training and Continuing Education for Constables.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706595

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §217.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.15, Waiver of Legislatively Required Continuing Education, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7024), and will not be republished.

Amendments were made by adding subsections (e)(1) and (e)(2) to include a waiver for civil process for deputy constables. Subsection (h) was added to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

This amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.351, Continuing Education Required for Peace Officers.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706596

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §219.1, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7025), and will not be republished.

Amendments were made to subsection (a) changing the language of student to individual. Amendments to subsection (b) include an individual not licensed in Texas who qualifies with training from accepted federal positions, military police, and TDCJ corrections training. In subsections (j) and (k), the expiration of endorsement is removed to allow an individual who did not use their three exam attempts in the 180-day time frame. This allows the individual to pay a fee and apply for their final attempts after meeting requirements. Subsection (k) is amended to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission;

Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706597
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §219.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §219.3, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7026), and will not be republished.

Amendments were made to subsection (b)(11) for exam administration changes due to the electronic testing eliminating the paper answer sheets. Subsection (c) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.305, Examination Results.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706599
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §219.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §219.7, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7026), and will not be republished.

Amendments were made by removing wording in subsection (a) that no longer applies after moving to electronic testing: results are immediate. Subsection (h) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.305, Examination Results.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706600
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.1, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7027), and will not be republished.

Amendments were made to set out the procedure for which a peace officer or county jailer is determined for calculating service time and proficiency certificates. This rule is created specifically to provide clarity and guidance for maintaining licensee record accuracy. Subsection (f) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200706601

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 1, 2008

Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §221.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.3, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7028), and will not be republished.

Amendments were made to subsection (b)(3) to include crisis intervention/de-escalation training required by §1701.402(g) as amended by H.B. 1473 79th Texas Legislature, Regular Session. Subsection (c)(3) is added as required by §1701.402(g) H.B. 1473 79th Texas Legislature, Regular Session. Subsection (e) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706602

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 1, 2008

Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §221.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.5, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7029), and will not be republished.

Amendments were made to subsections (b)(1) - (4) to allow proficiency certificate application for licensees who have had a suspension and who have fulfilled their suspension term and completed reinstatement requirements. Subsection (e) is amended to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706603

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 1, 2008

Proposal publication date: October 5, 2007

For further information, please call: (512) 936-7722

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37 TAC §221.23

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.23, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7030), and will not be republished.

Amendments were made to subsection (a)(2) by including an associate's degree to be added for recognition. Subsection (d) is amended to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706604
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §221.31

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §221.31, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7031), and will not be republished.

Amendments were made to subsection (a) by providing clarification to the rule. Subsection (d) is amended to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, Chapter 1701, §1701.357, Weapons Proficiency for Certain Retired Peace Officers and Federal Criminal Investigators.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706608
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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CHAPTER 223. ENFORCEMENT

37 TAC §223.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.17, concerning Reinstatement of a License, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7032), and will not be republished.

Section 223.17(a) is amended to delete language regarding expiration of a license. Subsection (c) is amended to reflect the effective date of these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.351, Continuing Education Required for Peace Officers.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706609
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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CHAPTER 225. SPECIALIZED LICENSES

37 TAC §225.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §225.1, concerning Issuance of Jailer License through a Contract Jail Facility, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7032), and will not be republished.

Section 225.1(e) is amended to reflect the original appointment date of a jailer instead of the date the license was issued. Subsection (g) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

This amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.307, Issuance of License, and §1701.310, Appointment of County Jailer; Training Required.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706611
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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37 TAC §225.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §225.3, concerning Issuance of Peace Officer License through a Medical Corporation, without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7033), and will not be republished.

Section 225.3(c) is amended to reflect changes in licensing terminology currently used by the Commission. Subsection (f) is amended to reflect the effective date for these changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.303, License Application; Duties of Appointing Entity.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2007.

TRD-200706613
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: March 1, 2008
Proposal publication date: October 5, 2007
For further information, please call: (512) 936-7722

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 601. GENERAL PROVISIONS

40 TAC §601.60

The State Pension Review Board adopts new rule §601.60 of the Texas Administrative Code with changes to the language of the proposed rule. The rule concerning the procedure for submission, consideration, and disposition of rule petitions to the Board is adopted with changes to the text published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7671). Section 601.60 will be republished.

The changes to the published text are as follows: The changes to the text for §601.60 remove the words "of Trustees". The changes to the proposed text are non-substantive, and they affect no new parties or subjects of regulation. For these reasons, re-publication of the proposed rules is not necessary before adopting the rule.

No comments were received regarding the adoption of the new rule.

Adoption of the §601.60 is pursuant to the authority provided under Texas Government §801.201(a) which requires the Board to adopt rules for the conduct of its business. And in accordance with Texas Government Code §2001.021(b) which states a state agency by rules shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition.

§601.60. Petition for Adoption of Rules.

Petitions. Any interested person may submit a written petition to the executive director or the Board requesting the adoption of a rule. Within 60 days of the receipt of the petition, the executive director will either:

(1) Send written reasons to the interested party stating the reasons for not submitting the matter to rulemaking proceedings; or

(2) Initiate rulemaking procedures as governed by the Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2007.

TRD-200706430
Lynda Baker
Executive Assistant
State Pension Review Board
Effective date: January 7, 2008
Proposal publication date: October 26, 2007
For further information, please call: (512) 463-1736

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 309, Racetrack Licenses and Operations. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years. The rules being reviewed by the Commission are organized under the following subchapters: Subchapter A, Racetrack Licenses; Subchapter B, Operation of Racetracks; Subchapter C, Horse Racetracks; and Subchapter D, Greyhound Racetracks.

The review shall assess whether the reasons for initially adopting the rules continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Gloria Giberson, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register*.

Any proposed changes to the rules within Chapter 309 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200706594
Mark Fenner
General Counsel
Texas Racing Commission
Filed: December 21, 2007

♦ ♦ ♦

Adopted Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 53, concerning Municipal Securities, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6563).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 53 continue to exist and readopts the sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706494
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 55, concerning Child Support Enforcement, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6563).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 55 continue to exist and readopts the sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706495
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review pursuant to Texas Government Code, §2001.039 of Texas Administrative Code, Title 1, Part 3, Chapter 57, concerning Rental-Purchase Act Compliance. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of this review, the OAG has determined that the reasons for adopting Chapter 57 no longer exist. In a separate rulemaking action, the OAG proposes the repeal of Chapter 57, §57.1, relating to the availability of a rental-purchase form agreement from the OAG's Consumer Protection Division. The proposed repeal of the rule may be found in the Proposed Rules section in this issue of the *Texas Register*.

This concludes the OAG's review of Title 1, Part 3, Chapter 57.

TRD-200706496
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review pursuant to Texas Government Code, §2001.039 of Texas Administrative Code, Title 1, Part 3, Chapter 58, concerning Physician Joint Negotiation. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of this review, the OAG has determined that the reasons for adopting Chapter 58 no longer exist. In a separate rulemaking action, the OAG proposes the repeal of Chapter 58. The proposed repeal may be found in the Proposed Rules section in this issue of the *Texas Register*.

This concludes the OAG's review of Title 1, Part 3, Chapter 58.

TRD-200706497
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 59, concerning Collections, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 59 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706498
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 60, concerning Texas Crime Victim Services Grant Programs, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6564).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 60 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706499
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 61, concerning Crime Victims' Compensation, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6565).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

During the course of this rule review, the OAG adopted certain amendments to Chapter 61, §§61.402, 61.405 - 61.407 and new §61.414 and §61.415 in a separate rulemaking. Notice of this adoption was published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8117).

As a result of the rule review, the OAG finds that the reasons for adopting the rules in Chapter 61 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200706500
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 62, concerning Sexual Assault Prevention and Crisis Services, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6565).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 62 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706501

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 64, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6565).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 64 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706502
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 66, concerning Family Trust Fund Disbursement Procedures, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter rules in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6566).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 66 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706503
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 68, concerning Negotiation and Mediation of Certain Contract Disputes, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review this chapter in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6566).

The review assessed whether the reasons for adopting the chapter continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 68 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706504
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 69, Subchapter A, §§69.1 - 69.7, concerning Procedures for Vendor Protests of Procurements. The OAG published its Notice of Intent to Review these rules in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6566).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 69, Subchapter A continue to exist and readopts the sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706505
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 69, Subchapter B, §69.25, concerning Historically Underutilized Business Program, pursuant to Texas Government Code §2001.039. The OAG published its Notice of Intent to Review this rule in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6566).

The review assessed whether the reasons for adopting the rule continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rule in Chapter 69, Subchapter B continue to exist and readopts the section without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706506
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 69, Subchapter C, §§69.35, 69.36, and 69.45, concerning Management of Vehicles, pursuant to Texas Government Code, §2001.039. The OAG published its Notice of Intent to Review these rules in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6566).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 69, Subchapter C continue to exist and readopts the sections without changes in accordance with the requirements of Texas Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-200706507
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2007

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 176, Driver Training Schools, Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 176, Subchapters AA - DD, in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7085).

Relating to the review of 19 TAC Chapter 176, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. At a later date, the TEA will propose changes to Subchapter AA to make minor amendments to administrative requirements and reflect current industry practices.

Relating to the review of 19 TAC Chapter 176, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. At a later date, the TEA will propose changes to Subchapter BB relating to the administration of driving safety schools and course providers. In addition, statutory references within the rule text will be updated.

Relating to the review of 19 TAC Chapter 176, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rules. At a later date, the TEA will propose changes to Subchapter CC to bring rules into alignment with Texas Education Code, §1001.103, which specifies that a drug and alcohol driving awareness program must be offered in the same manner as a driving safety course. In addition, statutory citations will be amended and statutory references within the rule text will be updated.

Relating to the review of 19 TAC Chapter 176, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. The TEA is proposing no changes to Subchapter DD at this time.

The TEA received no comments related to the rule review of 19 TAC Chapter 176, Subchapters AA - DD.

This concludes the review of 19 TAC Chapter 176.

TRD-200706564
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: December 21, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §53.31(j)

AMFI	Rehabilitation or Reconstruction
≤30% AMFI	0% interest, 5-year deferred, forgivable Loan.
>30% and ≤50% AMFI	0% interest, 15- year deferred, forgivable Loan.
>50% and ≤60% AMFI	0% interest, 20-year deferred, forgivable Loan.
>60% and ≤80% AMFI	0% interest, 20-year term repayable Loan.

Figure: 10 TAC §53.85(a)(5)

OCC and HBA with Rehabilitation	Reconstruction	Rehabilitation
Project or Administrative Cost		
Application intake and processing	$500	$500
Construction and disbursement documentation preparation	$250	$250
Environmental review	$400	$400
Exempt administrative environmental	$50	$50
Final inspection	$200	$200
Information services	$100	$100
Initial inspection	$500	$500
Procurement of contractor	$300	$300
Progress inspections (up to 7 at $200 max each, minimum of 4 required)[1]	$1,400	$1,400
Pre-construction conference	$200	$200
Project document preparation	$100	$100
Punch list verification inspection	$200	$200
Schedule of values	$100	$100
Work write-up	N/A	$500
Work write-up summary/cost estimate	$400	$400
Administrative Cost Only		
Affirmative marketing plan	$100	$100
Financial management	$150	$150
Procurement of professional service provider	$200	$200
Recordkeeping	$400	$400
Project Cost Only		
Plans (market value)	N/A	$200
Plans and specification manual (market value)	$1,500[2]	N/A
Specification manual	N/A	$200

[1] A maximum of two progress inspections are allowed when a housing unit is replaced with a MHU.

[2] Plans and specifications are not an allowable cost when a housing unit is replaced with a MHU.

HBA	
Project or Administrative Cost per PROJECT	
Application intake and processing	$500
Preparation of loan documents	$100
Environmental Review	$400
Exempt administrative environmental	$50
Information services	$100
Project document preparation	$100
Property Inspection	$350
Schedule of values	$100
Administrative Cost Only per CONTRACT	
Affirmative marketing plan	$100
Financial management	$150
Procurement of professional service provider	$200
Recordkeeping	$400
Project Cost Only per PROJECT	
Credit Report	$50
Homebuyer Counseling	$300

Figure: 10 TAC §53.85(c)

Type of Activity		Max Percentage for Soft Costs Based on Hard Costs or Project Costs	Max Percentage for Administrative Costs Based on Total Project Costs
OCC--Reconstruction (includes MHU to site-built and contract for deed conversions)	**Max Assistance**		
	$60,000	16%	2%
	$67,500	14%	2%
	$75,000	12%	2%
OCC or HBA--Rehabilitation only		24%	2%
OCC--Reconstruct (replacement) with MHU	**Max Assistance**		
	$60,000	12%	2%
	$67,500	10%	2%
	$75,000	8%	2%
HBA--Acquisition only for contract for deed conversion		10%	4%
HBA--Downpayment and closing costs only		10%	4%

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-12 A	Application for Certification for Additional Tax Rate Reduction for Enhanced Oil Recovery Projects Using Anthropogenic Carbon Dioxide	01/2008	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	01/2008	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells	04/2006	Tex. Nat. Res. Code, §89.060
OW-2	Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells	04/2006	Tex. Nat. Res. Code, §89.060
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	04/2006	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	New Form effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	01/2008	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	10/2004	3.14

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	01/2008	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401-4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401-4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	9/01 (Revision effective 07/01/04)	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	1/82 Revision effective 05/01/04	3.9

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 16 TAC §9.35(c)

LP-Gas Leak Classification

Classification	Action Criteria	Examples
Grade 1	Requires prompt action to protect life and property. The prompt action in some instances may require one or more of the following: 1. Implementation of company emergency plan 2. Evacuating premises 3. Blocking off an area 4. Rerouting traffic 5. Eliminating sources of ignition 6. Venting the area 7. Stopping the flow of gas by closing valves or other means 8. Notifying police and fire departments	1. Any leak which, in the judgment of operating personnel at the scene is regarded as an immediate hazard 2. Escaping gas that has ignited 3. Any indication of gas which has migrated into or under a building or into a tunnel 4. Any leak that can be seen, heard or felt and which is in a location that may endanger the general public or property
Grade 2	Many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal routine basis with periodic re-inspection as necessary. Product may not be introduced into a container with a Grade 2 leak on a container appurtenance until the leak is repaired.	Any leak which, in the judgment of operating personnel at the scene, is NOT regarded as an immediate hazard shall be scheduled for repair, where no migration of gas into or under a building or into a tunnel is evident

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards

Table 1 *(Revised February 2008)*

Requirements	Self-service Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non-Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least ½" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7.Letters at least 4" high on container or 1 1/4" high on cylinder exchange or storage rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
10. Letters at least 2" high on operating end of container: W.P. _____, WORKING PRESSURE ____, or WORK PRESS. ____			*	*
11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. _____ or TANK NO. _____			*	*
12. Letters at least 2" high on a background of contrasting color, readily visible to the public, stating: 24-Hour Emergency Number _____ (not required at non-licensee installations)	*	*	*	*

13. Lettering at least 3/4" high with the telephone number of the certified employee responsible for the outlet, and/or the operations supervisor, on a background of contrasting color, readily visible to the public (not required at non-licensee installations)	*		*	*

Figure: 16 TAC §9.313

NFPA 54 Sections with Additional Requirements or Not Adopted

Affected NFPA 54 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments
5.6.4	additional requirements	See Comission rule §9.312, Certification Requirements for Joining Methods
Chapter 7	additional requirements	See Commission rule §9.308, Identification of Piping Installation
7.2.6	additional requirements	See Commission rule §9.311(c), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
9.1.3	additional requirements	See Commission rule §9.307, Identification of Converted Appliances.
9.2.6	additional requirements	See Commission rule §9.311(a), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
Chapter 10	additional requirements	See Commission rule §9.306, Room Heaters in Public Buildings.
10.29	not adopted	See Commission rule §9.303, Exclusion of NFPA 54, §10.29.

Figure: 30 TAC §290.111(b)(4)(A)

Raw Source Water Monitoring Schedule

Systems that are not part of a combined distribution system[(1)] and serve . . .	must begin the first round of source water monitoring no later than the month beginning . . .	and must begin the second round of source water monitoring no later than the month beginning . . .
At least 100,000 people	October 1, 2006	April 1, 2015
From 50,000 to 99,999 people	April 1, 2007	October 1, 2015
From 10,000 to 49,999 people	April 1, 2008	October 1, 2016
Fewer than 10,000 people and monitor for *E. coli*	October 1, 2008	October 1, 2017
Fewer than 10,000 and monitor for *Cryptosporidium*	April 1, 2010	April 1, 2019
[(1)] Systems that provide treated surface water to another system and are part of a combined distribution system must begin monitoring at the same time as the system in the combined distribution system that has the earliest compliance date.		

Figure: 30 TAC §290.111(c)(3)(B)

Treatment Technique Requirements for *Cryptosporidium* [(1)]

Average *Cryptosporidium* Level in the Raw Water	**Bin Classification**	**Minimum Removal/ Inactivation Requirement**
Cryptosporidium < 0.075 oocyst/L	Bin 1	2.0-log
0.075 oocysts/L ≤ *Cryptosporidium* < 1.0 oocysts/L	Bin 2	4.0-log
1.0 oocysts/L ≤ *Cryptosporidium* < 3.0 oocysts/L	Bin 3	5.0-log
Cryptosporidium ≥ 3.0 oocysts/L	Bin 4	5.5-log
[(1)]The executive director will assign *Cryptosporidium* removal credit based on the treatment processes used at the plant: ***a)*** Treatment plants utilizing coagulation, flocculation, and granular media filtration will receive a 2.5-log *Cryptosporidium* removal credit. ***b)*** Treatment plants utilizing coagulation, flocculation, and granular media filtration will receive a 3.0-log *Cryptosporidium* removal credit. *c)* The executive director will assign *Cryptosporidium* removal credit to treatment plants utilizing bag, cartridge, or membrane filters on an individual basis.		

Figure: 30 TAC §290.111(c)(3)(B)(i)

Compliance Date for Existing Sources

A system that serves . . .	Must comply with the requirements of this paragraph no later than . . .
At least 100,000 people	April 1, 2012
From 50,000 to 99,999 people	October 1, 2012
From 10,000 to 49,999 people	October 1, 2013
Fewer than 10,000 people	October 1, 2014

Figure: 30 TAC §290.111(d)(1)

Microbial Inactivation Requirements

Pretreatment Provided	Filter Technology Used			
	Conventional Filters [1]		Membrane Filters and Cartridge Filters [2]	
	Giardia	Virus	*Giardia*	Virus
No coagulation	NA	NA	0.0-log[3]	4.0-log
Coagulation and flocculation	1.0-log	3.0-log	0.0-log	3.0-log
Coagulation, flocculation, and clarification	0.5-log	2.0-log	0.0-log	2.0-log

[1] Filters in which water passes through a porous granular media and which utilize depth filtration processes.

[2] Filters in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism.

[3] The executive director will determine the required *Giardia* inactivation on a case-by-case basis.

Figure: 30 TAC §290.113(a)(2)

Date to Start Stage 2 Compliance

This type of system:	**Must comply with Stage 2 starting:**
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
System serving 100,000 or more population	April 1, 2012
System serving 50,000 to 99,999 population	October 1, 2012
System serving 10,000 to 49,999 population	October 1, 2013
System serving fewer than 10,000 population if the system distributes only treated groundwater or potable water purchased from another system	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if no *Cryptosporidium* monitoring is required under §290.111(b)(3)(B)	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if *Cryptosporidium* monitoring is required under §290.111(b)(3)(B)	October 1, 2014
Systems that are part of a combined distribution system	
Consecutive system or wholesale system that is part of a combined distribution system	At the same time as the system with the earliest compliance date in the combined distribution system

Figure: 30 TAC §290.113(c)(3)

STAGE 1
ROUTINE MONITORING FREQUENCY AND LOCATIONS FOR TTHM AND HAA5

Type of System	Minimum Monitoring Frequency	Sample Location in the Distribution System
Surface water or groundwater under the direct influence of surface water system serving at least 10,000 persons	four water samples per quarter per treatment plant	At least 25 % of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods[1].
Surface water or groundwater under the direct influence of surface water system serving from 500 to 9,999 persons	one water sample per quarter per treatment plant	Locations representing maximum residence time[1].
Surface water or groundwater under the direct influence of surface water system serving fewer than 500 persons	one sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in subsection (c) of this section.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	one water sample per quarter per treatment plant [2]	Locations representing maximum residence time[1] .
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	one sample per year per treatment plant[2] during month of warmest water temperature	Locations representing maximum residence time[1]. If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets criteria in subsection (c) of this section for reduced monitoring.

[1] If a system elects to sample more frequently than the minimum required, at least 25 % of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2] With approval of the executive director, multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required.

Figure: 30 TAC §290.113(c)(4)

STAGE 1 REDUCED MONITORING FREQUENCY AND LOCATIONS FOR TTHM AND HAA5

IF YOU ARE A...	YOU MAY REDUCE MONITORING IF YOU HAVE MONITORED AT LEAST ONE YEAR AND YOUR...	TO THIS LEVEL
Surface water or groundwater under the direct influence of surface water system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, less than or equal to 4.0 mg/L[1]	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per quarter at distribution system location reflecting maximum residence time
Surface water or groundwater under the direct influence of surface water system serving from 500 to 9,999 people which has a source water annual average TOC level, before any treatment, less than or equal to 4.0 mg/L[1]	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
Surface water or groundwater under the direct influence of surface water system serving fewer than 500 people		Any surface water or groundwater under the direct influence of surface water system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L	one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	TTHM annual average less than or equal to 0.040 mg/L and HAA5 annual average less than or equal to 0.030mg/L for two consecutive years OR TTHM annual average less than or equal to 0.020 mg/L and HAA5 annual average less than or equal to 0.015mg/L for one year	one sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

[1] TOC sampling must be performed in accordance with §290.112(c)(2)(C) of this title (relating to Total Organic Carbon (TOC))

Figure: 30 TAC §290.115(a)(2)

Date to Start Stage 2 Compliance[1]

This type of system:	**Must comply with Stage 2 starting:**
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
System serving 100,000 or more population	April 1, 2012
System serving 50,000 to 99,999 population	October 1, 2012
System serving 10,000 to 49,999 population	October 1, 2013
System serving fewer than 10,000 population if the system distributes only treated groundwater or potable water purchased from another system	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if no *Cryptosporidium* monitoring is required under §290.111(b)(3)(B) of this title (relating to Surface Water Treatment)	October 1, 2013
System serving fewer than 10,000 population that treats surface water (or groundwater under the direct influence of surface water) if *Cryptosporidium* monitoring is required under §290.111(b)(3)(B) of this title	October 1, 2014
Systems that are part of a combined distribution system	
Consecutive system or wholesale system that is part of a combined distribution system	At the same time as the system with the earliest compliance date in the combined distribution system

[1] The executive director may grant a two-year extension to the compliance dates shown in this table in accordance with 40 CFR §141.620(c)(5).

Figure: 30 TAC §290.115(c)(1)

Date to Establish Stage 2 Sites

This type of system:	**Must Establish Stage 2 sites by:**
Systems that are not in a combined distribution system:	
System serving 100,000 or more people	January 1, 2009
System serving 50,000 to 99,999 people	July 1, 2009
System serving 10,000 to 49,999 people	January 1, 2010
System serving fewer than 10,000 people	July 1, 2010
Systems in a combined distribution system	
Consecutive or wholesale system of any population	at the same time as the largest system in the combined distribution system

Figure: 30 TAC §290.115(c)(2)

Routine Stage 2 Monitoring Frequency and Number of Sites

Water Type	Retail Population	Routine Frequency [1]	Routine Number of Sites [5]
Surface Water (or Groundwater Under the Direct Influence of Surface Water) [2]	fewer than 500	annual	1 or 2 [3]
	500 to 3,300	quarterly	1 or 2 [3]
	3,301 to 9,999	quarterly [4]	2
	10,000 to 49,999	quarterly [4]	4
	50,000 to 249,999	quarterly [4]	8
	250,000 to 999,999	quarterly [4]	12
	1,000,000 to 4,999,999	quarterly [4]	16
	5,000,000 or more	quarterly [4]	20
Groundwater	fewer than 500	Annual	2 [3]
	500 to 9,999	Annual	2 [3]
	10,000 to 99,999	quarterly [4]	4
	100,000 to 499,999	quarterly [4]	6
	500,000 or more	quarterly [4]	8

[1] All systems must monitor during month of highest disinfection by-product concentrations.

[2] A system that uses any treated surface water or groundwater under the direct influence of surface water shall be considered a surface water system for purposes of this section.

[3] Systems on annual monitoring and surface water systems serving 500 to 3,300 people must identify two (2) sample sites in accordance with 40 CFR §141.605(b). Systems on annual monitoring and surface water systems serving 500 to 3,300 people will use a single site if the highest TTHM and HAA5 concentrations occur at the same time and place. If highest TTHM and HAA5 concentrations occur at the same time and location, one dual sample set must be collected at that location. If highest TTHM and HAA5 concentrations occur at different locations, then a single TTHM sample must be collected at the location with higher historical TTHM, and a single HAA5 sample must be collected at the location with higher historical HAA5.

[4] Systems on quarterly monitoring must take dual sample sets every 90 days.

[5] Monitoring locations must be approved by the executive director.

Figure: 30 TAC §290.115(c)(3)

Reduced Stage 2 Monitoring Frequency and Number of Sites

Source Water Type	Population Size Category	Monitoring Frequency [1]	Distribution System Monitoring Location Total per Monitoring Period
Surface or GUI	less than 500	Annual	Monitoring may not be reduced.
	500 to 3,300	Annual	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	3,301 to 9,999	Annual	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	10,000 to 49,999	quarterly	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs
	50,000 to 249,999	quarterly	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs
	250,000 to 999,999	quarterly	6 dual sample sets at the locations with the three highest TTHM and three highest HAA5 LRAAs
	1,000,000 to 4,999,999	quarterly	8 dual sample sets at the locations with the four highest TTHM and four highest HAA5 LRAAs
	5,000,000 or more	quarterly	10 dual sample sets at the locations with the five highest TTHM and five highest HAA5 LRAAs
Ground-water	less than 500	every third year (triennial)	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	500 to 9,999	Annual	1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter. [2]
	10,000 to 99,999	Annual	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement
	100,000 to 499,999	quarterly	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs
	500,000 or more	quarterly	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs

[1] Systems on quarterly monitoring must take dual sample sets every 90 days.

[2] Systems on annual monitoring and surface water systems serving 500 to 3,300 people will use a single site if the highest TTHM and HAA5 concentrations occur at the same time and place. Any such system may be required to take individual TTHM and HAA5 samples (instead of a dual sample set) at sites identified as the highest TTHM and HAA5 sites, respectively. If separate sites for individual TTHM and HAA5 samples are used, then the TTHM sample must be collected during the quarter with highest historical TTHM levels and the HAA5 sample must be collected during the quarter with the highest historical HAA5 level.

Figure: 30 TAC §290.115(c)(5)(B)

Timing of Stage 1 Samples Evaluated for 40/30 IDSE Waiver

This type of system:	**40/30 certification is based on eight consecutive calendar quarters of Stage 1 compliance monitoring results beginning no earlier than** [1]
Systems that are not in a combined distribution system:	
System serving 100,000 or more people	January 2004
System serving 50,000 to 99,999 people	
System serving 10,000 to 49,999 people	January 2005
System serving fewer than 10,000 people	
Systems in a combined distribution system	
Consecutive or wholesale system of any population	at the same time as the largest system in the combined distribution system

[1] A system that did not monitor during the specified period must base eligibility on compliance samples taken during the 12 months preceding the specified period.

Figure: 30 TAC §290.115(c)(5)(C)

IDSE Schedule

Retail population	**Submit IDSE plan or waiver documentation by** [1, 2]:	**Complete IDSE by:**	**Submit IDSE report by:** [3]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system			
100,000 or more	October 1, 2006	September 30, 2008	January 1, 2009
50,000 through 99,999	April 1, 2007	March 31, 2009	July 1, 2009
10,000 through 49,999	October 1, 2007	September 30, 2009	January 1, 2010
less than 10,000 (Community Only)	April 1, 2008	March 31, 2010	July 1, 2010
Other systems that are part of a combined distribution system:			
Any population	At the same time as the system with the earliest compliance date in the combined distribution system		

[1] If, within 12 months after the date identified in this column, the executive director does not approve a system's IDSE plan or notify the system that review is incomplete, the IDSE plan will be considered approved. The system must implement that plan and must complete standard IDSE monitoring or a system specific study no later than the date identified in the third column.

[2] Waiver documentation must be submitted by the date indicated.

[3] If the executive director does not approve an IDSE report or notify a system that review is incomplete within three months after the IDSE report is due to be submitted, or within nine months of the date that waiver documentation must be submitted for systems receiving waivers, the submitted report or waiver documentation will be considered approved and must be implemented

Figure: 30 TAC §290.115(c)(5)(C)(ii)(I)

Number and Type of IDSE Sample Sites [1]

Population and Water Type	IDSE Site Type				
	Near Entry Points	Average Residence Time	Potential High TTHM Locations	Potential High HAA5 Locations	Total Number of Sites
Systems distributing surface water or groundwater under the direct influence of surface water (GUI)					
less than 500 that purchase treated surface water or GUI	1	-	1	-	2
less than 500 with no purchased water source	-	-	1	1	2
500 to 3,300 that purchase treated surface water or GUI	1	-	1	-	2
500 to 3,300 with no purchased water source	-	-	1	1	2
3,301 to 9,999	-	1	2	1	4
10,000 to 49,999	1	2	3	2	8
50,000 to 249,999	3	4	5	4	16
250,000 to 999,999	4	6	8	6	24
1,000,000 to 4,999,999	6	8	10	8	32
5,000,000 or more	8	10	12	10	40
Systems that only use groundwater not under the direct influence of surface water					
less than 500 that purchase treated groundwater	1	-	1	-	2
less than 500 with no purchased water source nonconsecutive systems	-	-	1	1	2
500 to 9,999	-	-	1	1	2
10,000 to 99,999	1	1	2	2	6
100,000 to 499,999	1	1	3	3	8
500,000 or more	2	2	4	4	12

[1] If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the system must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, the system must take samples at entry points to the distribution system having the highest annual water flows.

Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)

Frequency of IDSE Monitoring

Population and Type of Water	Sampling Frequency and Timing
Systems distributing surface water or groundwater under the direct influence of surface water (GUI)	
less than 500 that purchase treated surface water or GUI	one (during peak historical month)
less than 500 with no purchased water source	
500 to 3,300 that purchase treated surface water or GUI	four (every 90 days)
500 to 3,300 with no purchased water source	
3,301 to 9,999	
10,000 to 49,999	six (every 60 days)
50,000 to 249,999	
250,000 to 999,999	
1,000,000 to 4,999,999	
5,000,000 or more	
Systems that only use groundwater not under the direct influence of surface water	
less than 500 that purchase treated groundwater	one (during hottest month)
less than 500 with no purchased water source nonconsecutive systems	
500 to 9,999	four (every 90 days)
10,000 to 99,999	
100,000 to 499,999	
500,000 or more	

[1] A dual sample set with both a TTHM and an HAA5 sample must be taken at each monitoring location during each monitoring period.

[2] The hottest month is the historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature. Monitoring must be conducted during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. Available compliance, study, or operational data must be reviewed to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 4, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 4, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alexander Moulding Mill Company; DOCKET NUMBER: 2007-1381-PWS-E; IDENTIFIER: RN100828805; LOCATION: Hamilton, Hamilton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.41(c)(3)(B) and TCEQ Agreed Order Docket Number 2005-0762-PWS-E, Ordering Provision 2.a.i., by failing to provide a well casing 18 inches above the ground surface; 30 TAC §290.46(f)(3)(E)(i), by failing to keep in file and make available for commission review the water system's monthly operation reports; 30 TAC §290.39(j)(1)(A), by failing to notify the TCEQ prior to making any significant change or addition to the system's pressure maintenance facilities; 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2005-0762-PWS-E, Ordering Provision 2.b.ii., by failing to secure a sanitary control easement covering land within 150 feet of the well; 30 TAC §290.46(f)(3)(D)(i) and (n)(2) and §290.121(a), by failing to keep on file and make available for commission review water system bacteriological analysis results; 30 TAC §290.46(f)(3)(D)(ii), by failing to keep on file and make available for commission review annual inspection reports for the water system's ground storage tanks and two pressure tanks; 30 TAC §290.42(j), by failing to keep on file and make available for commission review documentation to demonstrate the use of American National Standards Institute/National Sanitation Foundation Standard 60 for chemical additives used for disinfection; and 30 TAC §290.46(n)(3), by failing to keep on file and make available for commission review the water system's well completion data; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254)751-0335.

(2) COMPANY: Franklin Bain; DOCKET NUMBER: 2007-1968-WOC-E; IDENTIFIER: RN103420550; LOCATION: Edmonson, Hale County, Texas; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806)796-7092.

(3) COMPANY: Boyett Construction, L.L.C.; DOCKET NUMBER: 2007-1666-WQ-E; IDENTIFIER: RN105205942; LOCATION: Bridge City, Orange County, Texas; TYPE OF FACILITY: hotel construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, Part III, Section F.1(a), (b), (d), (e), (f)(i), (f)(iii), and F.5(b), by failing to develop a storm water pollution prevention plan; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR150000, Part III, Section F.8(a), by failing to conduct an inspection of the controls at the site; and 30 TAC §281.25(a)(4), TPDES General Permit Number TXR150000, Part III, Section F.2(a) and F.7, and the Code, §26.121(a), by failing to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Custom Building Products, Inc.; DOCKET NUMBER: 2007-1466-AIR-E; IDENTIFIER: RN100614809; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: concrete products plant; RULE VIOLATED: 30 TAC §116.116(b)(2) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit amendment; PENALTY: $800; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Delta Tubular Processing, L.P.; DOCKET NUMBER: 2007-1767-IWD-E; IDENTIFIER: RN102180395; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: industrial wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0003540000, Effluent Limitations and Monitoring Requirements, by failing to comply with the permitted effluent limitations for chemical oxygen demand, ammonia nitrogen, oil and grease, flow, and total suspended solids; PENALTY: $18,200; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Diocese of Galveston-Houston; DOCKET NUMBER: 2007-1499-MWD-E; IDENTIFIER: RN101523215; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §319.11(b) and TPDES Permit Number WQ0014218001, Monitoring and Reporting Requirements Number 2, by failing to properly preserve effluent samples and meet the required holding times; 30 TAC §305.125(1) and TPDES Permit Number WQ0014218001, Monitoring and Reporting Requirements Number 7.c., by failing to report in writing to the TCEQ any effluent violation which deviates from the permitted effluent limitations by more than 40%; 30 TAC §319.5(b) and TPDES Permit Number WQ0014218001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze samples for each parameter at the minimum frequency specified in the permit; and 30 TAC §305.125(1) and TPDES Permit Number WQ0014218001, Definitions and Standard Permit Conditions Number 2.e., by failing to accurately calculate and report the monthly average concentration for fecal coliform; PENALTY: $11,626; Supplemental Environmental Project (SEP) offset amount of $9,301 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Griffin Industries, Inc.; DOCKET NUMBER: 2007-1235-AIR-E; IDENTIFIER: RN101638641; LOCATION: Bastrop County, Texas; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §112.32 and THSC, §382.085(b), by failing to operate plant processes within TCEQ regulatory limits for hydrogen sulfide; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Kiewit Texas Construction L.P.; DOCKET NUMBER: 2007-1297-AIR-E; IDENTIFIER: RN102816618; LOCATION: Webb County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 77586, General Requirement (1)(L), and THSC, §382.085(b), by failing to prevent visible emissions and opacity of 5% or less averaged over a six-minute period; 30 TAC §101.201(e) and THSC, §382.085(b), by failing to notify the agency within 24 hours of the discovery of an emissions event; and 30 TAC §116.516(2), Standard Permit Number 77586, General Requirement (4)(B), and THSC, §382.085(b), by failing to minimize emissions from all in-plant roads; PENALTY: $3,120; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78559-5247, (956) 425-6010.

(9) COMPANY: City of Pharr; DOCKET NUMBER: 2007-1623-MWD-E; IDENTIFIER: RN102928041; LOCATION: Hidalgo, County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010596001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia nitrogen; PENALTY: $2,275; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78559-5247, (956) 425-6010.

(10) COMPANY: SOHO Retail, Ltd.; DOCKET NUMBER: 2007-1505-EAQ-E; IDENTIFIER: RN104347141; LOCATION: Bexar County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan; PENALTY: $3,900; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Jared Morris dba Sportsman Center; DOCKET NUMBER: 2007-1975-PST-E; IDENTIFIER: RN101828127; LOCATION: Brownwood, Brown County, Texas; TYPE OF FACILITY: retail store with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: City of Strawn; DOCKET NUMBER: 2007-1060-MWD-E; IDENTIFIER: RN102896024; LOCATION: Palo Pinto County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0010326001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permit effluent limits for biochemical oxygen demand, pH, dissolved oxygen, and flow; PENALTY: $7,680; Supplemental Environmental Project (SEP) offset amount of $6,144 applied to having the Respondent perform an erosion control project at the Lake Tucker dam in Palo Pinto County; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3048; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1483-AIR-E; IDENTIFIER: RN100214386; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refining company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 38754, SC Number 48, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $34,125; Supplemental Environmental Project (SEP) offset amount of $8,531 applied to Texas A&M Corpus Christi-AutoCheck Program; Supplemental Environmental Project (SEP) offset amount of $8,531 applied to Texas A&M University at Kingsville-South Texas Natives Seed and Plant Restoration Project; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361)825-3100.

(14) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1545-AIR-E; IDENTIFIER: RN100211663; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refining company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 2937, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.211(b)(1)(H) and (b)(1)(I) and THSC, §382.085(b), by failing to submit an administratively complete final report; PENALTY: $10,557; Supplemental Environmental Project (SEP) offset amount of $4,223 applied to Texas A&M Corpus Christi-AutoCheck Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Weekley Homes, L.P.; DOCKET NUMBER: 2007-1969-WQ-E; IDENTIFIER: RN105363683; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200706513

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Enforcement Orders

A default order was entered regarding Grayson Hilltop Estates Water Supply Corporation, Docket No. 2005-0606-PWS-E on December 7, 2007 assessing $2,205 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2005-0750-MWD-E on December 7, 2007 assessing $14,260 in administrative penalties with $2,852 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-0093-AIR-E on December 7, 2007 assessing $34,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dennis A. Holmes, Docket No. 2006-0265-WTR-E on December 7, 2007 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Song Jung dba New Core Cleaners, Docket No. 2006-0793-DCL-E on December 7, 2007 assessing $1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Vance E. Gifford dba Giffords Cleaners, Docket No. 2006-1049-DCL-E on December 7, 2007 assessing $2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hyung S. Park dba Quality Cleaners Center, Docket No. 2006-1150-DCL-E on December 7, 2007 assessing $889 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TQH Investments, Ltd. dba Bells Cleaners and dba Mart Cleaners, Docket No. 2006-1184-DCL-E on December 7, 2007 assessing $2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Willie Scales dba Starchy Down Cleaners Kirkwood and dba Starchy Down Cleaners, Docket No. 2006-1240-DCL-E on December 7, 2007 assessing $2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IRSA, Inc. dba 1.50 Cleaners and dba Humble Discount Cleaners, Docket No. 2006-1426-DCL-E on December 7, 2007 assessing $2,370 in administrative penalties with $474 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding M D C M S, Inc. dba Millennium Dry Cleaners, Docket No. 2006-1558-DCL-E on December 7, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kirby-Dunstan, Inc. dba Le Bon Cleaners, Docket No. 2006-1563-DCL-E on December 7, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tristar Convenience Stores, Inc. dba Handi Stop 46, Docket No. 2006-1591-PST-E on December 7, 2007 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Felix Aguilar, Docket No. 2006-1696-LII-E on December 7, 2007 assessing $562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Buda and Guadalupe-Blanco River Authority, Docket No. 2006-1738-MWD-E on December 7, 2007 assessing $3,630 in administrative penalties with $726 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512)

239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cockrell Hill, Docket No. 2006-1771-PWS-E on December 7, 2007 assessing $2,203 in administrative penalties with $441 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining, L.P., Docket No. 2006-1948-AIR-E on December 7, 2007 assessing $49,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cerrito Gas Processing, L.L.C., Docket No. 2006-2161-AIR-E on December 7, 2007 assessing $128,043 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dang Cong Huynh dba B & G Food Store, Docket No. 2007-0040-PST-E on December 7, 2007 assessing $9,350 in administrative penalties with $1,870 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2007-0070-MWD-E on December 7, 2007 assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Covington, Docket No. 2007-0188-MWD-E on December 7, 2007 assessing $14,145 in administrative penalties with $2,829 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John E. Mitchell Jr., Docket No. 2007-0211-LII-E on December 7, 2007 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anna, Docket No. 2007-0347-MWD-E on December 7, 2007 assessing $14,535 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bonham, Docket No. 2007-0367-PWS-E on December 7, 2007 assessing $2,970 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1462, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diocese of Galveston-Houston, Docket No. 2007-0384-MWD-E on December 7, 2007 assessing $6,080 in administrative penalties with $1,216 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2007-0385-AIR-E on December 7, 2007 assessing $56,166 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nancy Lea Huckabee and Linda Dianne Griffith dba Huckabee Dairy, Docket No. 2007-0508-AGR-E on December 7, 2007 assessing $2,225 in administrative penalties with $445 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James A. Dyche dba Crest Water Company, Docket No. 2007-0547-PWS-E on December 7, 2007 assessing $1,749 in administrative penalties with $349 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Newell Cooper dba Cooper Dairy Farm, Docket No. 2007-0551-AGR-E on December 7, 2007 assessing $2,080 in administrative penalties with $416 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2007-0557-AIR-E on December 7, 2007 assessing $14,000 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2007-0562-AIR-E on December 7, 2007 assessing $6,450 in administrative penalties with $1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2007-0567-MLM-E on December 7, 2007 assessing $65,832 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-0582-AIR-E on December 7, 2007 assessing $6,875 in administrative penalties with $1,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell Chemical Company, Docket No. 2007-0583-AIR-E on December 7, 2007 assessing $5,525 in administrative penalties with $1,105 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company, L.P., Docket No. 2007-0594-AIR-E on December 7, 2007 assessing $4,850 in administrative penalties with $970 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sheema Enterprise, Inc. dba Highway 59 Phillips 66, Docket No. 2007-0610-PST-E on December 7, 2007 assessing $3,675 in administrative penalties with $735 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chung Nguyen dba Hilltop Village Mobile Home Park, Docket No. 2007-0612-MWD-E on December 7, 2007 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas County Utility & Reclamation District, Docket No. 2007-0623-MWD-E on December 7, 2007 assessing $4,340 in administrative penalties with $868 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petrus Adrianus Boekhorst dba Petal Dairy, Docket No. 2007-0625-AGR-E on December 7, 2007 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alicia Anguiano, Docket No. 2007-0640-AGR-E on December 7, 2007 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Galileo Mount Houston TX LP dba Mount Houston Utilities, Docket No. 2007-0648-MWD-E on December 7, 2007 assessing $5,310 in administrative penalties with $1,062 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc. dba Aqua Texas, Inc., Docket No. 2007-0657-MWD-E on December 7, 2007 assessing $2,574 in administrative penalties with $514 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Emerald Valley Independent Aquatic Network, Ltd. Co., Docket No. 2007-0658-PWS-E on December 7, 2007 assessing $364 in administrative penalties with $72 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Young Men's Christian Association of the Greater Houston Area, Docket No. 2007-0661-MWD-E on December 7, 2007 assessing $7,700 in administrative penalties with $1,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brookshire Municipal Water District, Docket No. 2007-0662-MWD-E on December 7, 2007 assessing $2,410 in administrative penalties with $482 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2007-0676-AIR-E on December 7, 2007 assessing $30,826 in administrative penalties with $6,165 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend County Municipal Utility District No. 142, Docket No. 2007-0685-MWD-E on December 7, 2007 assessing $1,740 in administrative penalties with $348 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc. dba Aqua Texas, Inc., Docket No. 2007-0704-MWD-E on December 7, 2007 assessing $4,712 in administrative penalties with $942 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bluegrove Water Supply Corporation, Docket No. 2007-0706-PWS-E on December 7, 2007 assessing $1,260 in administrative penalties with $252 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy Hilton, Docket No. 2007-0709-MLM-E on December 7, 2007 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ashish Food, Inc. dba Amigo Stop, Docket No. 2007-0718-PST-E on December 7, 2007 assessing $5,200 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jason E. Weaver, Docket No. 2007-0745-LII-E on December 7, 2007 assessing $401 in administrative penalties with $80 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alvin Washington dba Organic Resource Management, Docket No. 2007-0755-MSW-E on December 7, 2007 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Beef Processors, L.P., Docket No. 2007-0757-AIR-E on December 7, 2007 assessing $4,200 in administrative penalties with $840 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crane Co., Docket No. 2007-0774-WQ-E on December 7, 2007 assessing $3,180 in administrative penalties with $636 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atmos Energy Corporation, Docket No. 2007-0793-AIR-E on December 7, 2007 assessing $2,392 in administrative penalties with $478 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burleson County MUD 1, Docket No. 2007-0818-PWS-E on December 7, 2007 assessing $850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc., Docket No. 2007-0823-MWD-E on December 7, 2007 assessing $5,960 in administrative penalties with $1,192 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cemex Construction Materials, L.P., Docket No. 2007-0825-AIR-E on December 7, 2007 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Ted DeVries dba DeVries Dairy, Docket No. 2007-0849-AGR-E on December 7, 2007 assessing $1,860 in administrative penalties with $372 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spring Creek Utility District, Docket No. 2007-0860-MWD-E on December 7, 2007 assessing $3,770 in administrative penalties with $754 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge G & P (North Texas) L.P., Docket No. 2007-0873-AIR-E on December 7, 2007 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nalle Custom Homes, Inc., Docket No. 2007-0914-WQ-E on December 7, 2007 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dome Petrochemical, L.C., Docket No. 2007-0931-IWD-E on December 7, 2007 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso County Water Control Improvement District 4, Docket No. 2007-0980-PWS-E on December 7, 2007 assessing $395 in administrative penalties with $79 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Big Tex Trailer Manufacturing, Inc., Docket No. 2007-1005-AIR-E on December 7, 2007 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Denny Heathcott, Docket No. 2007-1316-OSI-E on December 7, 2007 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sunny Financial L.L.C. dba Normandy Food Mart, Docket No. 2007-1339-PST-E on December 7, 2007 assessing $3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding A & D Auto Pit Stop, Ltd. dba Rays Auto Center, Docket No. 2007-1399-PST-E on December 7, 2007 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Al Jabour dba Rivers Country Villas and RV Park, Docket No. 2005-1177-PWS-E on December 4, 2007 assessing $1,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200706562
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Notice of Correction on Notice of Availability of the Draft 2008 Clean Water Act, §305(b) Water Quality Inventory and the §303(d) List

The following notice was originally published in the December 21, 2008, issue of the *Texas Register* and was inadvertently submitted with an incorrect Web site. Additionally, the Public Comment period deadline was extended from January 22 to January 31, 2008 due to the holidays.

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Draft 2008 Clean Water Act (CWA), §305(b) Water Quality Inventory and the §303(d) List. The report is an overview of the status of surface waters in the state, including concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. In addition, a draft summary is provided of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The report is used by TCEQ for management decisions including monitoring, planning, implementing, and funding best management practices to control pollution sources, and to develop a list of impaired waters for selecting water bodies for which total maximum daily load analyses will be initiated.

For the 2008 list, TCEQ conducted a water quality assessment of all classified segments and other segments with a pending regulatory reason for evaluation or the need to initiate or revise planning activities. TCEQ is requesting cooperators, such as local, state, or federal agencies, members of the general public, or academic institutions to provide data or information that indicates water quality problems that may change the standards attainment status of other segments.

The report will be available December 21, 2007 on the TCEQ Web site at: *http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/08twqi/twqi08.html*. Information regarding the public comment period may also be found on the Web site above. Review and comment on individual water bodies and the summaries, as described on the Web site, are encouraged through January 31, 2008.

Any data and information provided to TCEQ to refute or substantiate current assessments must be submitted in summary format, collected using approved TCEQ methods and materials, and consistent with TCEQ quality assurance requirements.

After the public comment period, TCEQ will evaluate all additional data or information received. If any additional data or information submitted influences the draft inventory, this will be reflected in the final Draft 2008 Water Quality Inventory and the §303(d) List submitted to the Environmental Protection Agency for approval.

TCEQ will consider and respond to comments received on this draft during the comment period, in a "Response to Comments" document. This document will be posted on the Web site with the Draft 2008 Water Quality Inventory and the §303(d) List after the close of the comment period. It is not necessary to re-submit comments sent to the TCEQ

previously. **Comments must be received by 5:00 p.m. on January 31, 2008.** Information must be submitted in writing and cannot be accepted by phone.

Individuals unable to access documents on the TCEQ Web site may contact Patrick Roques, Texas Commission on Environmental Quality, Monitoring Operations Division, MC 165, P.O. Box 13087, Austin, Texas 78711-3087 or (512) 239-4604.

TRD-200706558
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Notice of District Petition

Notices issued December 19, 2007.

TCEQ Internal Control No. 11272007-D02; C.W. Richmond, L.P. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 187 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Amegy Bank National Association, on the property to be included in the proposed District; (3) the proposed District will contain approximately 519.56 acres located in Fort Bend County, Texas; and (4) the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of the City of Richmond, Texas (City). According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $43,900,000.

TCEQ Internal Control No. 06192007-D02; White Rock Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert White Rock Water Supply Corporation to White Rock Special Utility District (District), to transfer Certificate of Convenience and Necessity (CCN) No. 12547 from White Rock Water Supply Corporation to White Rock Special Utility District. White Rock Special Utility District's business address will be: 841 LCR 463, Mexia, Texas 76667. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of White Rock Water Supply Corporation and the organization, creation and establishment of White Rock Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 12547 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by White Rock Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by White Rock Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200706561
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water

Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 4, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 4, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Armando Alvarez; DOCKET NUMBER: 2007-0642-MSW-E; TCEQ ID NUMBER: RN104461793; LOCATION: 3101 North 77, Harlingen, Cameron County, Texas; TYPE OF FACILITY: unauthorized disposal area; RULES VIOLATED: 30 TAC §330.15(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: $2,625; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Israel R. Gonzalez; DOCKET NUMBER: 2007-0920-LII-E; TCEQ ID NUMBER: RN105204333; LOCATION: 15412 Esther Drive, Conroe, Montgomery County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4 and §30.5(a), Texas Water Code (TWC), §37.003, and Texas Occupations Code, §1903.251, by failing to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; PENALTY: $625; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Lowell Johnson dba Cason Country Store; DOCKET NUMBER: 2006-0206-PST-E; TCEQ ID NUMBER: RN101869154; LOCATION: Highway 11 and Highway 44, Cason, Morris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank (UST); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Assurance Account Number 0061676U for Fiscal Year 2004; PENALTY: $1,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200706569

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 21, 2007

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Notice of Opportunity to Comment on Settlement Agreement of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 4, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 4, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Tariq Shahzad Enterprises, Inc. dba Pakco 4; DOCKET NUMBER: 2005-1342-PST-E; TCEQ ID NUMBER: RN102650645; LOCATION: 2560 Lutcher Drive, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code, §382.085(b), by failing to maintain Stage II vapor recovery records on-site at facilities ordinarily manned during business hours; PENALTY: $1,000; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200706568
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 21, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of December 13, 2007 through December 19, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0014361001 to authorize an increase in the discharge of filter backwash effluent from a water treatment plant from a daily average flow not to exceed 26,700 gallons per day to a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 1,750 feet east of State Highway 304, approximately 1.12 miles north of the intersection of State Highway 304 and State Highway 713 in Caldwell County, Texas.

CENTERPOINT ENERGY HOUSTON ELECTRIC LLC which operates the Cypress District Operations & Service Center, which provides aid to various operating departments in the transmission and distribution of electric power, has applied for a renewal of TPDES Permit No. WQ0002608000, which authorizes the discharge of treated sanitary wastewater commingled with vehicle wash water, floor drainage and air conditioning condensate via Outfall 001 at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 18018 Huffmeister Road, northwest of the intersection of Huffmeister Road and Cypress-Rosehill Road; and approximately 25 miles northwest of the City of Houston, Harris County, Texas.

GULF UTILITY SERVICES INC which now operates a wastewater treatment facility, has applied for a major amendment to amendment to recalculate the total copper and total silver limits at Outfall 001 using the 2000 Texas Surface Water Quality Standards and a monitoring frequency reduction for flow via Outfall 001. The current permit authorizes a discharge of wash water and domestic wastewater via Outfall 001 at a daily average flow not to exceed 30000 gallons per day. The facility is located at 14035 Industrial Road, approximately 2.4 miles southeast of the intersection of Federal Road and Interstate Highway 10, in unincorporated, Harris County, Texas.

HOUSHANG SOLHJOU has applied for a renewal of TPDES Permit No. WQ0012261001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 415 Carby, approximately 2,400 feet east-northeast of the intersection of Airline Drive and Carby, north of the City of Houston in Harris County, Texas.

TRS ENVIROGANICS INC has applied for a new permit, Proposed Permit No. WQ0004817000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 1,112 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site will be located north of Rio Grande City, on the north side of La Morita Road, approximately 1/8 mile west of the intersection of La Morita Road and Farm-to-Market Road 755 in Starr County, Texas.

VAITHI DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0012527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 14718 Kuykendahl Road between Farm-to-Market Road 1960 and Interstate Highway 45 in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200706559
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Notice of Water Rights Application

Notice issued December 19, 2007.

APPLICATION NO. 14-5380B; Capitol Aggregates, Ltd, P.O. Box 6230, Austin, Texas 78762, Applicant, seeks to amend Certificate of Adjudication No. 14-5380 to delete diversion point No. 2 on the Colorado River, authorize diversion of the 22 acre-feet and 5 acre-feet of water per year for a total of 27 acre-feet of water per year from diversion point No.1 on the 80 acre-foot reservoir, and change the use of the 27 acre-feet of water per year to industrial use in Travis County. The application was received on August 31, 2006; additional information and fees were received on June 2, 2006, July 20, 2006. The application was accepted for filing and declared administratively complete on January 11, 2007. Technical information and notice fees were received on April 2, 2007, April 10, 2007, June 14, 2007, October 31, 2007 and November 9, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ

can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200706560
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2007

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-05-0115-00001C to Public Strategies, Inc., an entity with a principal place of business 301 NW 63rd Street, Suite 600, Oklahoma City, OK 732116. The contractor will provide technical assistance, reports, position papers, feasibility studies and consultative services related to the implementation and evaluation of the approved HHSC Healthy Marriage initiative.

This is the **second renewal of the contract awarded pursuant to HHSC Request for Proposals.**

The total value of the contract with **Public Strategies, Inc.** is $2,650,000.00. The contract was executed on December 12, 2007 and will expire on August 31, 2008, unless extended or terminated sooner by the parties. Public Strategies, Inc. will produce numerous documents and reports during the term of the contract, with the final reporting due by September 30, 2008.

TRD-200706590
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 21, 2007

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Texas Department of Housing and Community Affairs

Notice of Funding Availability

HOME Investment Partnerships Program

Community Housing Development Organization (CHDO) Single Family and Rental Housing Development Program

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $6,000,000 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDO) to develop affordable single family housing for homeownership and rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and 84.42 for conflict of interest and 24 CFR Part 5, subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. Parts that reference The 2008 Qualified Allocation Plan (QAP) will be effective 20 days after the date the QAP is filed with the *Texas Register.*

2) Allocation of HOME Funds.

a) These funds are made available through unawarded and deobligated HOME funds that are set-aside for eligible CHDO single family developments and rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable housing development activities. All funds released under this NOFA are to be used for the creation of affordable single family and rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m. June 2, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development cost must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. For rental housing developments, the Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.

d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000. Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Prohibited Activities.

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §§53.34 and 53.50, which involve only the acquisition, rehabilitation and construction of affordable developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37. Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds

available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

c) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants.

a) The Department provides HOME CHDO funding to qualified nonprofit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

b) Only Applicants that have proven success and acceptable performance on a previous HOME contract received from the Department, as evidenced by the contract and determined by the Department, are eligible to apply for funding for single family development.

c) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300.

d) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42, and ineligibility with any requirements under 10 TAC §50.5 excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements.

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Single Family Development Affordability Requirements.

a) Applicants must ensure that the minimum affordability requirements are met for HOME assisted single family developments pursuant to 24 CFR §92.254. The Department has elected the recapture provision to recoup all or part of the HOME funds provided to the homebuyer, if the housing does not continue to be the principal residence of the family assisted for the duration of the required affordability period.

b) Properties will be restricted under the deed of trust or other such instrument as determined and drafted by the Department for these terms.

8) Site and Development Restrictions.

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §§200.925 or 200.926d. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §3601-3619). Additionally, pursuant to the 2007 Qualified Allocation

Plan (QAP), §§49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the 2008 Qualified Allocation Plan and Rules 10 TAC §50.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

9) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37 of this title, pursuant to 10 TAC §53.45 (c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.44(6).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to §53.44(7).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants for rental housing development must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum of 10% of the total development cost from other public agencies and/or private entities.

v) All of the 2007 Qualified Allocation Plan and Rules at 10 TAC §49.9(h), excluding paragraphs (4)(I), (11), (12) and (15).

vi) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

10) Review Process.

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do

not require additional review in Phase Two or Three will be reviewed for recommendation to the Board by the Committee.

Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be reviewed for recommendation to the Board by the Committee.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed

b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

c) A site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on June 2, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Carmen Roldan at (512) 475-2215 or via e-mail at carmen.roldan@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2008 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2008 Final ASPM.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2008 Final ASPM. All scanned copies must

be scanned in accordance with the guidance provided in the 2008 Final ASPM.

f) Third party reports- If third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200706584
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 21, 2007

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Notice of Funding Availability

HOME Investment Partnerships Program

Homebuyer Assistance Program (HBA)

Summary.

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $6 million dollars of HOME funds for first time homebuyer assistance. The availability and use of these funds are subject to the State HOME Rule at 10 Texas Administrative Code, Title 10, Part 1, Chapter 53 ("HOME Rule") in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code.

Allocation of HBA Funds.

These funds are made available through the U.S. Department of Housing and Urban Development (HUD) HOME and American Dream Downpayment Initiative (ADDI) allocations and are subject to the Regional Allocation Formula. All funds released under this NOFA shall be used to assist first time homebuyers earning 80 percent (80%) or less of the Area Median Family Income (AMFI) as defined by HUD, for downpayment and closing costs assistance. The amount of HOME HBA funds provided to any household shall not exceed the greater of six percent of the purchase price of the single family housing or $10,000.

Section 2306.111, Texas Government Code, also mandates the Department to allocate no less than 95 percent of the HOME Program Funds to applicants which serve households located in a non-participating jurisdiction (non-PJ). The remaining five percent of the annual HOME Program funds will be allocated to applicants serving persons with disabilities who live in any area of the state. Due to the unavailability of Participating Jurisdiction (PJ) funds, these HBA funds will not be awarded in a PJ. These funds may not be reserved for persons with disabilities in an Application; however, persons with disabilities may be served as part of the general population.

In accordance with 10 TAC §53.48(a), this NOFA will be an Open Application Cycle. Funds will be allocated using the Regional Allocation Formula and will be available on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis utilizing the funds allocated by the Regional Allocation Formula until all funds have been awarded or March 3, 2008, regardless of method of delivery. On March 4, 2008, any funds not awarded under the open cycle utilizing the RAF, will be available statewide, on a first-come, first-served basis until all funds have been awarded or May 30, 2008, whichever occurs first. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

The maximum award amount for HBA shall not exceed $300,000 per Applicant per NOFA; however, up to $500,000 of HBA funds may be awarded to Applicants whose Service Area includes multiple counties within a Uniform State Service Region. Additionally, up to four percent (4%) of the requested project funds may be requested for administrative costs.

Pursuant to the Regional Allocation Formula, (RAF) the table below shows the allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region.

Table 1. Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	$338,651	5.6%	$338,588	100.0%	$63	0.0%
2	Abilene	$222,314	3.7%	$217,610	97.9%	$4,705	2.1%
3	Dallas/Fort Worth	$1,061,218	17.7%	$325,808	30.7%	$735,409	69.3%
4	Tyler	$762,787	12.7%	$594,896	78.0%	$167,891	22.0%
5	Beaumont	$352,566	5.9%	$319,290	90.6%	$33,275	9.4%
6	Houston	$426,081	7.1%	$174,842	41.0%	$251,239	59.0%
7	Austin/Round Rock	$255,271	4.3%	$143,729	56.3%	$111,542	43.7%
8	Waco	$281,592	4.7%	$149,773	53.2%	$131,819	46.8%
9	San Antonio	$306,291	5.1%	$192,194	62.7%	$114,096	37.3%
10	Corpus Christi	$434,016	7.2%	$359,610	82.9%	$74,406	17.1%
11	Brownsville/Harlingen	$1,054,571	17.6%	$764,704	72.5%	$289,868	27.5%
12	San Angelo	$304,627	5.1%	$212,604	69.8%	$92,024	30.2%
13	El Paso	$200,015	3.3%	$111,033	55.5%	$88,982	44.5%
	Total	$6,000,000	100.0%	$3,904,682	65.1%	$2,095,318	34.9%

The Department will accept applications until March 3, 2008 under an open cycle application method utilizing the above Regional Allocation Formula. On March 4, 2008, any funds not awarded under the open cycle utilizing the RAF, will be available statewide, on a first-come, first-served basis until May 30, 2008.

Eligible and Ineligible Activities.

HBA funds may only be used for downpayment assistance towards the purchase of single family housing by low-income households. The assisted household must meet the definition of a first time homebuyer as defined in 24 CFR §92.2. HBA funds may be used to purchase one- to four- family housing, condominium unit, cooperative unit, or manufactured housing.

Prohibited activities include those under HOME Rule at 10 TAC §53.37 and the Federal HOME rule at 24 CFR §92.214.

In accordance with 10 TAC §53.72, the contract term for HBA shall not exceed 24 months.

HBA Assistance.

Down payment and closing cost assistance is provided to first time homebuyers for the acquisition, of affordable single family housing. Eligible first time homebuyers may receive assistance of six percent of the purchase price of the single family housing or $10,000 which ever is greater. Assistance will be in the form of a 10-year deferred, forgivable loan creating a 2nd or 3rd lien. All homes purchased with HBA funds must meet all applicable codes and standards including the Texas Minimum Construction Standards (TMCS).

If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homebuyer's principal residence, the loan shall become due and payable.

Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share on the number of years of the remaining loan term.

In the event the home is sold (voluntary or involuntary); the assisted homebuyer will pay the loan balance from the shared net proceeds of the sale. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

In the event of refinance of any superior lien, at Department's discretion one of the following options will apply:

1. re-subordination of the Note if the assisted homebuyer can provide documentation, acceptable to the Department, showing that no funds are due to the assisted homebuyer as a result of the refinance; or

2. the assisted homebuyer will pay off the Department's note from loan proceeds from the refinanced superior lien.

In the event of payoff of any superior note, the assisted homebuyer will have the option of:

1. repaying the balance of the Department's Note in full; or

2. repaying the balance of the Department's Note in equal monthly installments over a five (5) year period.

At the completion of the assistance, all properties must meet the Texas Minimum Construction Standards (TMCS), all applicable building and safety codes, ordinances and local zoning ordinances. If a home is newly constructed it must also meet federal energy requirements as defined by HUD.

Eligible and Ineligible Applicants

Eligible applicants are Units of General Local Government, Nonprofit Organizations and Public Housing Authorities (PHA's).

Applicants may be ineligible for funding if they meet any of the criteria listed in the State HOME Rule at 10 TAC §53.42.

Threshold Criteria.

Cash Reserve: Each awarded Applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves

of at least $50,000 to continued administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment must be included in the Applicant's resolution.

Homebuyer Counseling and Lender Products: Each Applicant must provide evidence of available Homebuyer Counseling and lender products. Evidence of Homebuyer Counseling must include documentation describing the level of homebuyer counseling proposed for potential homebuyers including a copy of the curriculum, type of materials that will be provided to the homebuyer, a copy of a proposed written agreement with service provider, if the Applicant is not the service provider, and a description of post purchase counseling to be provided. Homebuyer Counseling must be provided to each household served and must be a minimum of 8 hours, if awarded.

Applicant is required to submit three letters from lenders interested in participating in the Applicant's proposed Homebuyer Assistance Program. Lender Letters must be on the lender's letterhead and include the lender name, address, city, state, and zip code. Lender letter must affirm the willingness, ability and the type of affordable loan products available for the Applicant's targeted homebuyers.

Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming a person authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

Match: Applicants are required to provide eligible match in the amount of 7% or more of the requested project funds. Match is a threshold requirement.

Review Process.

Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis. Each application will be assigned a "Received Date" based on the date and time it is physically received by the Department. The Department will ensure review of materials required under the NOFA and ASPM for threshold criteria and eligibility and will issue a notice of any Administrative Deficiencies for Applications within 45 days of the Received Date.

All applicants will be processed through the Department's Application Evaluation System and will include a previous award and past performance evaluation. Poor past performance may disqualify an applicant for funding recommendation or a funding recommendation may include conditions.

Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HBA funds before an application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds remain under the NOFA and that the Application will not be processed.

An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

Application Submission.

The Application Guide for this NOFA will be available on the Department's website at www.tdhca.state.tx.us. Applications must be submitted on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting to the Department. All Applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials. Final application deadline date is 5:00 p.m. FRIDAY MAY 30, 2008.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address:

Texas Department of Housing & Community Affairs

HOME Division

221 E. 11th Street

Austin, Texas 78701

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per application. Please send a check, cashier's check or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee.

Applications that do not meet the filing deadline and Application fee requirements will be returned to the Applicant and will not be considered for funding. Application deficiencies will be processed in accordance to 10 TAC §53.48(a). An Applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7.

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME HBA Program. For proper completion of the Application the Department strongly encourages potential applicants to review all applicable HOME rules and regulations and to attend an application training workshop.

Application Workshop.

The Department will present a HBA Application Workshop that will provide an overview of the HBA Program, Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application Workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

Audit Requirements.

An Applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b). This is a program eligibility requirement outlined in the Application, therefore Applications that have outstanding past audits will be disqualified. Staff will not recommend Applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Contact Information

Questions regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: home@tdhca.state.tx.us

TRD-200706605
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 21, 2007

♦ ♦ ♦

Notice of Funding Availability

Housing Trust Fund Rental Production Program

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $844,000 in funding from the Housing Trust Fund for financing of affordable rental housing for very low-income and extremely low-income Texans. The availability and use of these funds is subject to the state Housing Trust Fund Rules at 10 TAC Chapter 51 ("HTF Rules") and Chapter 2306, Texas Government Code in effect at the time an application is submitted. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

2) Allocation of Housing Trust Funds.

a) These funds are made available through General Revenue Funds appropriated to the Housing Trust Fund during the 80th Legislative Session for financing rental housing developments which involve new construction, rehabilitation or acquisition and rehabilitation. All funds released under this NOFA are to be used for the subsidizing of affordable rental housing units that target very low-income Texans earning 50 percent or less of Area Median Family Income (AMFI) and are not being funded with Housing Tax Credits. Additionally, if the funds are used to target extremely low-income Texans earning 30 percent or less of the AMFI and those units are not designated to serve extremely low-income households through another subsidy source, the Department may allow a forgivable loan only for those extremely low-income units.

b) In accordance with 10 TAC §51.8, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted until 5:00 p.m. May 1, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department will allocate Housing Trust Fund awards as a loan, to eligible recipients for the provision of housing for very low and extremely low-income individuals and families. Funds will be distributed primarily in rural areas and will not be awarded to developments that have received a Housing Tax Credits award so that special emphasis is given to smaller proposed developments. The Department's underwriting guidelines at 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio.

d) Award amounts are limited to no more than $250,000 per development.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

3) Eligible and Ineligible Activities and Restrictions.

a) Eligible activities will include the financing, new construction, acquisition and/or rehabilitation of affordable rental housing developments.

b) Ineligible activities include the acquisition, rehabilitation, reconstruction or refinancing of affordable rental housing constructed within the past 5 years or previously funded by the Department.

c) Ineligible activities include financing for any property that also has received or will receive a Housing Tax Credit award.

d) Restrictions include the displacement of existing affordable housing. Pursuant to §2306.203(a)(4) of the Texas Government Code, Housing Trust Funds shall not be utilized on a development that has the effect of permanently and involuntarily displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

4) Eligible and Ineligible Applicants.

a) The Department provides HTF to qualified local units of government, public housing authorities, nonprofit organizations and for-profit entities.

b) Ineligible Applicants will include the following:

i) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

ii) Applicants, or persons affiliated with the Applicant that have been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

iii) Applicants or persons affiliated with the Applicant that are subject of enforcement action under state or federal securities law, or are the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

iv) Applicants or persons affiliated with the Applicant that have unresolved audit findings related to previous or current funding agreements with the Department;

v) Applicants or persons affiliated with the Applicant that have delinquent loans, fees or other commitments with the Department, until payment is made;

vi) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

vii) Applicants who have submitted incomplete Applications;

viii) Applicants or persons affiliated with the Applicant that have been otherwise barred by the Department;

ix) Applicants are subject to §1.13 of this title; or

x) Applicants or persons affiliated with the Applicant that have breached a contract with a public agency.

c) Each Application will be reviewed for its compliance history by the Department, consistent with 10 TAC Chapter 60. Applicants, or persons affiliated with an Application, found to have a Development or Contract in Material Noncompliance with the Department, will have their Application(s) terminated.

5) Affordability Requirements.

a) Pursuant to §2306.203(6) of the Texas Government Code, Applicants proposing multifamily housing, new construction or rehabilitation, will be required to guarantee the Development will remain affordable to income qualified families or individuals for a period of 20 years.

b) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

6) Site and Development Restrictions.

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of local codes applications will be required to meet Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply.

b) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

7) Threshold Criteria.

a) Housing units subsidized by HTF funds must be affordable to very-low (50% AMFI or below) or extremely low-income (30% AMFI or below) persons. Mixed Income rental developments may only receive funds for units that serve very-low or extremely low-income persons. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) The Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37.

c) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise. Applicants must demonstrate the application can meet the following threshold criteria to be considered for funding:

i) The application is consistent with the requirements established in the HTF rules and the NOFA.

ii) The Applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development.

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target units for individuals or families earning 50% or less of area medium income for the development site.

iv) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

8) Review Process.

a) Pursuant to 10 TAC §51.8, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "Received Date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in two review phases, as applicable. Applications will continue to be prioritized for funding based on their "Received Date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "Received Date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two will be reviewed for recommendation to the Board by the Committee.

Phase Two will include a comprehensive review for financial feasibility for Development Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available Housing Trust Fund funds before an application has completed all phases of review. In the case that all Housing Trust Fund funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new Housing Trust Fund funds become available, Applications will continue onward with their review without losing their Received Date priority. If Housing Trust Fund funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under the

NOFA, the applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

b) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined, will be terminated without being processed as an Administrative Deficiency.

c) Pursuant to 10 TAC §51.8(e), a site visit will be conducted as part of the HTF Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HTF funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §51.8(g), it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution Procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

9) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on May 1, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at 512-475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Ann Gusman-MacBeth at (512) 475-4606 or via e-mail at ann.macbeth@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. If an Application is submitted for two separate housing finance programs where both programs are either open cycle, or competitive, the Application will be handled in accordance with the guidelines of each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) Applications submitted to the Department must be complete and include all support documentation and associated application materials as described in this NOFA .

d) Applicants must submit two complete printed copies of all Application materials as detailed in the 2007 ASPM for Housing Trust Fund.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume.

f) If third party reports are not received at the time of application submission, the Application will be terminated.

g) Application materials including manuals, NOFA, program guidelines, and applicable Housing Trust Fund rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $200.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200706582

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 21, 2007

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Notice of Funding Availability

HOME Investment Partnerships Program

Rental Housing Development Program

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $15,000,000 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and 84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. Parts that reference The 2008 Qualified Allocation Plan (QAP) will be effective 20 days after the date the QAP is filed with the *Texas Register.*

2) Allocation of HOME Funds.

a) These funds are made available through unawarded and deobligated HOME funds that are set-aside for rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable rental housing development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m. June 2, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development cost must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.

d) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Prohibited Activities.

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34, which involve only the acquisition, rehabilitation and construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants.

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §50.5(a) excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Affordability Requirements.

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is

subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions.

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926(d). To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). Additionally, pursuant to the 2008 Qualified Allocation Plan (QAP), 10 TAC §50.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the 2008 Qualified Allocation Plan and Rules §50.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §5345(b).

8) Threshold Criteria.

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.44(6).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to 10 TAC §53.44(7).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum of 10% of the total development cost from other public agencies and/or private entities.

v) All of the 2008 Qualified Allocation Plan and Rules at 10 TAC §50.9(h), excluding subsections (4)(I), (11), (12) and (15).

vi) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process.

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two or Three will be reviewed for recommendation to the Board by the Committee.

Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be reviewed for recommendation to the Board by the Committee.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the QAP and 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

c) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encour-

ages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on June 2, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Carmen Roldan at (512) 475-2215 or via e-mail at carmen.roldan@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2008 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2008 Final ASPM.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2008 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

f) Third party reports- If third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200706583
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 21, 2007

Notice of Funding Availability

HOME Investment Partnerships Program

Tenant-Based Rental Assistance (TBRA)

Summary.

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $3 million dollars of HOME funds for Tenant-Based Rental Assistance. The availability and use of these funds are subject to the State HOME Rule at 10 Texas Administrative Code, Title 10, Part 1, Chapter 53 ("HOME Rule") in effect at the time the Application is submitted, the Federal HOME regulations governing the HOME Program (24 CFR Part 92), and Chapter 2306, Texas Government Code

Allocation of TBRA Funds.

These funds are HOME uncommitted and deobligated funds which have previously been made available through Regional Allocation Formula. Therefore, HOME funds under this NOFA are not subject to the Regional Allocation Formula. All funds released under this NOFA shall be used to administer a Tenant-Based Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants for up to 24 months and earning 80 percent (80%) or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the

households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD. Tenants must also participate in a self sufficiency program and the rental unit must be their primary residence.

Section 2306.111, Texas Government Code, also mandates the Department to allocate no less than 95 percent of the HOME Program Funds to Applicants which serve households located in a non-participating jurisdiction (non-PJ). The remaining five percent of the annual HOME Program funds will be allocated to Applicants serving persons with disabilities who live in any area of the state. Due to the unavailability of Participating Jurisdiction (PJ) funds, these TBRA funds will not be awarded in a PJ. These funds may not be reserved for persons with disabilities in an Application; however, persons with disabilities may be served as part of the general population.

In accordance with 10 TAC §53.48(a), this NOFA will be an Open Application Cycle. Funds will be available on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis until all funds have been awarded or 5:00 p.m. Friday, May 30, 2008 whichever occurs first, regardless of method of delivery. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

The maximum award amount for TBRA shall not exceed $300,000 per Applicant per NOFA. Additionally, up to four percent (4%) of the requested project funds may be requested for administrative costs.

Eligible and Ineligible Activities.

TBRA funds may only be used to provide rental subsidies, including security deposits and utility deposits in accordance with written tenant selection policies, for period not to exceed 24 months. TBRA allows the assisted tenant to live in and move to any dwelling unit with a right to continued assistance, and as further defined in the State HOME Rule at 10 TAC Chapter 53 and the Federal HOME Rule at 24 CFR Part 92.

Prohibited activities include those under HOME Rule at 10 TAC §53.37 and the Federal HOME rule at 24 CFR §92.214.

In accordance with 10 TAC §53.72, the contract term for TBRA shall not exceed 36 months.

TBRA Assistance.

TBRA is provided to eligible tenants for payment of rental subsidies in accordance with written tenant selection policies, and for a period of time that does not exceed 24 months per Household. Security deposits and utility deposits may be provided in conjunction with rental assistance. TBRA allows the assisted tenant to live in and move to any dwelling unit with a right to continued assistance, within the 24 month assistance period. If awarded TBRA funds, applicant will not be allowed to commit funds to a household six months prior to the end of the contract date.

The Household must comply with the initial eligibility requirements to participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an Income Eligible Household; reside in a rental unit that is located within the Administrator's Service Area; and meet all other eligibility requirements.

The rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD.

Eligible and Ineligible Applicants.

Eligible Applicants are Units of General Local Government, Nonprofit Organizations and Public Housing Authorities (PHA's).

Applicants may be ineligible for funding if they meet any of the criteria listed in the State HOME Program Rule at 10 TAC §53.42.

Threshold Criteria.

Cash Reserve: Each awarded Applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least the total of one month's rent for each proposed household to continue administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. This commitment must be included in the Applicant's resolution.

Self Sufficiency Program: Every Applicant must submit a detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the 24-month rental assistance contract term.

The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

1. A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the 24-month rental assistance.

2. If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

3. Specific housing goals that will be completed on or before the end of the 24-month assistance period. This includes finding subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

Resolution: All Applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment of cash reserves for use during the contract period, and naming a person authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant Application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

Review Process.

Pursuant to 10 TAC §53.48(a), each Application will be handled on a first-come, first-served basis. Each Application will be assigned a "Received Date" based on the date and time it is physically received by the Department. The Department will ensure review of materials required under the NOFA and ASPM for threshold criteria and eligibility and will issue a notice of any Administrative Deficiencies for Applications within 45 days of the Received Date.

All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for funding recommendation or recommendation may include conditions.

Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available TBRA funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds remain under the NOFA and that the Application will not be processed.

An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

Application Submission.

The Application Guide for this NOFA will be available on the Department's website at www.tdhca.state.tx.us Applications must be submitted on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting to the Department. All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials. Final Application deadline date is 5:00 p.m. FRIDAY, MAY 30, 2008.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address:

Texas Department of Housing & Community Affairs

HOME Division

221 E. 11th Street

Austin, Texas 78701

Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Please send a check, cashier's check or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the Application fee.

Applications that do not meet the filing deadline and Application fee requirements will be returned to the Applicant and will not be considered for funding. Application deficiencies will be processed in accordance to 10 TAC §53.48(a) an Applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7.

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME TBRA Program. For proper completion of the Application the Department strongly encourages potential Applicants to review all applicable HOME rules and regulations and to attend an Application training workshop.

Application Workshop.

The Department will present a TBRA Application Workshop that will provide an overview of the TBRA Program, Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application Workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

Audit Requirements.

An Applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b). This is a program eligibility requirement outlined in the Application, therefore Applications that have outstanding past audits will be disqualified. Staff will not recommend Applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Contact Information

Questions regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: home@tdhca.state.tx.us

TRD-200706606
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 21, 2007

Texas Department of Insurance

Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2680 on January 29, 2008 at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition from the Texas Windstorm Insurance Association (TWIA) proposing the approval of a new endorsement for the TWIA Dwelling Policy to cover loss of rental income, manual rules for the new endorsement, and rates for the proposed new coverage.

The Insurance Code §2210.351 requires that TWIA must file with the Department each manual of rules or rates and each rating plan that TWIA proposes to use, indicating the character and the extent of the coverage contemplated, accompanied by the proposed policy and endorsement forms; and authorizes the Commissioner to approve, disapprove or modify in writing the proposed manual of rules or rates, each proposed rating plan, and the proposed policy and endorsement forms.

The hearing is held pursuant to the Insurance Code §2210.008, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of the Texas Windstorm Insurance Association Act, including but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the approval of an endorsement for the

TWIA Dwelling Policy to cover loss of rental income, the manual rules for the new endorsement, and rates for the proposed new coverage.

Copies of the proposed residential endorsement filed by TWIA, the proposed update to the TWIA rules manual, and the proposed rate filing by TWIA for the new endorsement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request a copy of the proposed TWIA residential endorsement filing, the proposed update to the TWIA rules manual, and the proposed rate filing by TWIA for the new endorsement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0907-13).

TRD-200706548
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 20, 2007

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2681 on January 29, 2008, at 9:30 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the filing by the Texas Windstorm Insurance Association (TWIA) of a proposed increase in the current maximum limits of liability for the individually owned corporal movable property located in an apartment unit, residential condominium unit, or townhouse unit insured by TWIA.

Under Insurance Code §2210.502(c), the TWIA board of directors may propose, in addition to the statutorily authorized annual increases for inflation, increases in the maximum liability limits as the board determines necessary to implement the purposes of Chapter 2210. TWIA proposes to increase the maximum limits of liability for the individually owned corporal movable property located in an apartment unit, residential condominium unit or townhouse unit from a maximum limit of $181,000 (in effect as of January 1, 2008) to a new maximum limit of $350,000.

This notice is made in accordance with the Insurance Code §2210.504(a), which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of proposed adjustments to the liability limits.

A copy of TWIA's request is available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request a copy of the petition, contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-1207-17).

TRD-200706549
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 20, 2007

♦ ♦ ♦

Texas Judicial Council

Request for Applications

FY09 Discretionary Grant Program

Task Force on Indigent Defense

Visit website at www.courts.state.tx.us/tfid for more information.

Contact: Whitney Stark, Grants Administrator

Phone: (512) 936-6996

TRD-200706535
James Bethke
Director, Task Force on Indigent Defense
Texas Judicial Council
Filed: December 20, 2007

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Texas Lottery Commission

Instant Game Number 1061 "Sum It Up!"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1061 is "SUM IT UP!". The play style is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1061 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1061.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100 or $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1061 - 1.2D

PLAY SYMBOL	CAPTION
0	ZRO
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1061 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00, $100 or $500.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1061), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1061-0000001-001.

K. Pack - A pack of "SUM IT UP!" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of

five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUM IT UP!" Instant Game No. 1061 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUM IT UP!" Instant Game is determined once the latex on the ticket is scratched off to expose 7 (seven) Play Symbols. If the player's sum of YOUR NUMBERS equals the sum of the NUMBERS DRAWN, the player wins the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 7 (seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 7 (seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 7 (seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 7 (seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No non-winning ticket will contain the same play symbols appearing in the NUMBERS DRAWN play area as appears in the YOUR NUMBERS play area (in any order).

C. The combination of three "6" play symbols will never appear in the NUMBERS DRAWN play area or the YOUR NUMBERS play area.

D. The difference between the sum of the YOUR NUMBERS play symbols and the sum of the NUMBERS DRAWN play symbols will never be greater than 5 on non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUM IT UP!" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $40.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due.

In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B of these Game Procedures.

B. As an alternative method of claiming a "SUM IT UP!" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUM IT UP!" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SUM IT UP!" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1061. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1061 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,142,400	8.82
$2	470,400	21.43
$4	201,600	50.00
$5	100,800	100.00
$10	67,200	150.00
$20	16,800	600.00
$40	21,000	480.00
$50	5,250	1,920.00
$100	3,360	3,000.00
$500	420	24,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.97. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1061 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1061, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200706524
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 20, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Amended Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 30, 2007, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Matrix Business Technologies for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 35078.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Matrix Business Technologies seeks ETC/ETP designation in the local exchange of AT&T Texas. The Company holds Service Provider Certificate of Operating Authority Number 60108.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by January 18, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35078.

TRD-200706528
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2007

♦ ♦ ♦

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 18. 2007, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of James Cable, LLC for a State-Issued Certificate of Franchise Authority, Project Number 35134 before the Public Utility Commission of Texas.

The requested CFA service area includes the City Limits of Jacksboro, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35134.

TRD-200706531
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2007

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Gaines and Yoakum Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 18, 2007, for a proposed 230-kV transmission line in Gaines and Yoakum Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Gaines and Yoakum Counties, Texas. Docket Number 35106.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed transmission line is designated as the Mustang Station to Seminole Interchange Substation 230 kV Transmission Line Project. SPS stated that the proposed transmission line is needed to sustain reliable transmission service to the growing customer load in the Seminole, Texas area, and to increase transmission capacity necessary to serve new oil and gas industry loads.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is February 1, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35106.

TRD-200706529
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2007

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 13, 2007, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of DialToneServices, L.P. for Designation as an Eligible Telecommunications Carrier (ETP Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 35115.

The Application: DialToneServices, L.P. is requesting /ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. DialToneServices, L.P. seeks ETP designation in the uncertificated Sabine area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by January 24, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35115.

TRD-200706530
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2007

♦ ♦ ♦

Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas on December 18, 2007.

Docket Style and Number: Petition of 42 Individual Local Exchange Carriers for Declaratory Relief Regarding 811 Tariffed Service, Docket Number 35136.

The Application: Forty-two Individual Local Exchange Carriers serving mostly small and rural service areas as Texas Statewide Telephone Cooperative, Inc. (collectively, TSTCI) seek a declaratory ruling regarding provision of 811 service pursuant to tariffs that TSTCI have filed or may file before the commission.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35136.

TRD-200706532
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 2007

♦ ♦ ♦

Railroad Commission of Texas

Notice of Adopted Amendments to Certain Oil and Gas Division Forms

The Railroad Commission of Texas gives notice that it has adopted amendments to certain Oil and Gas Division forms as part of the adoption of amendments to 16 TAC §3.50, relating to Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive, and §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The

adopted amendments to §3.80 are found only in the Table and refer to new Form H-12A (Application for Certification for Additional Tax Rate Reduction for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide) and changes to Form H-14 (Enhanced Oil Recovery Reduced Tax Annual Report), Form P-5LC (Irrevocable Documentary Blanket Letter of Credit), and Form P-17 (Application for Exception to Statewide Rules (SWR) 26 and/or 27) and its instructions.

RAILROAD COMMISSION OF TEXAS Oil and Gas Division	APPLICATION FOR CERTIFICATION for ADDITIONAL TAX RATE REDUCTION for ENHANCED OIL RECOVERY PROJECTS USING ANTHROPOGENIC CARBON DIOXIDE	FORM H-12 A 1-2008 REFERENCE: Rule 50(k)

1. OPERATOR NAME, exactly as shown on P-5 Organization Report	2. OPERATOR P-5 NO.	3. RRC DISTRICT NO. AND COUNTY

4. MAILING ADDRESS, including city, state and zip code

5. STATUS OF ENHANCED RECOVERY PROJECT - In order to qualify for certification for additional tax rate reduction, the project must qualify under Tax Code, §202.054

☐ Enhanced Recovery Project is an existing, certified project

Certification Number: _____ and Date: _____

Submit a copy of the Railroad Commission Certification

☐ Enhanced Recovery Project is new

Submit this Form H-12 A with the Form H-12 requesting certification under Tax Code, §202.054

6. CARBON DIOXIDE TO BE USED IN THIS PROJECT:

☐ is captured from an anthropogenic source in Texas.

☐ would otherwise be released into the atmosphere as industrial emissions,

☐ is measurable at the source of capture; and

☐ will be sequestered in an oil or natural gas reservoir in Texas following the enhanced recovery process.

7. SOURCE OF ANTHROPOGENIC CARBON DIOXIDE:

Name of Facility Owner: _____

Name of Facility: _____

Location of Facility: _____

8. PERCENTAGE OF INJECTION FLUID THAT IS ANTHROPOGENIC CARBON DIOXIDE: _____ %

9. REQUIRED ATTACHMENTS:

☐ DESCRIPTION OF HISTORICAL RELEASE OF ANTHROPOGENIC CARBON DIOXIDE AT SOURCE FACILITY.

☐ DESCRIPTION OF METHOD OF CAPTURE OF THE ANTHROPOGENIC CARBON DIOXIDE AND THE METHOD AND ACCURACY OF MEASUREMENT OF ANTHROPOGENIC CARBON DIOXIDE THAT IS CAPTURED AT THE SOURCE.

☐ DESCRIPTION OF PLANNED SEQUESTRATION PROGRAM TO ENSURE THAT AT LEAST 99 PECENT OF THE ANTHROPOGENIC CARBON DIOXIDE WILL REMAIN SEQUESTERED FOR AT LEAST 1000 YEARS. Must include a description of monitoring and verification measures, including the planned duration of such measures, to be used for a period sufficient to demonstrate whether the sequestration programming is performing as expected.

CERTIFICATION

I declare under penalties prescribed in §91.143 Texas Natural Resources Code, that I am authorized to make this application, that it was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge.

Signature _____ Title _____

Name (Print or type) _____ Date _____ Phone (_____)_____

---- R R C U S E O N L Y ----

☐ **APPLICATION APPROVED** ☐ **APPLICATION DENIED**

ACTION DATE: _____ RRC SIGNATURE: _____

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

READ INSTRUCTIONS ON BACK

ENHANCED OIL RECOVERY REDUCED TAX ANNUAL REPORT

FORM H - 14
rev. 01-2008

1. Operator name exactly as shown on P-5 Organization Report	2. P-5 No.	3. Proj. No. F-	4. Dist. No.	5. County
6. Operator address including city, state, and zip code	7. Field Name exactly as on Proration Schedule			8. Report Period (M/Y - M/Y)
	9. RRC certified positive response date			10. H-13 approval date

11. Type of Project: ☐ NEW Cumulative amount of oil produced since response certification date: _____ bbls

☐ EXPANDED Cumulative amount of *incremental* oil produced since response certification date: _____ bbls

12. Lease Information (see Inst. 4)

Lease Name, exactly as shown on Proration Schedule	RRC Lease No.	No. of Active Wells		Fluid Injected (vol/yr)	Anthropogenic CO_2 Injected (vol/yr)	Qualified Oil Prod. (bbl/yr)
		Injection	Producing			

13. Attachment Checklist ☐ Project and lease production and injection graphs with supporting data (see Inst. 5a)

☐ Changes in Sequestration Program, if applicable ☐ Others, as necessary (see Instr. 5b and 5c)

CERTIFICATION

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this application, that it was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge.

Signature _____ Title _____

Name
(print or type) _____ Date _____ Phone (___) _____

TO: RAILROAD COMMISSION OF TEXAS
Attention: Oil & Gas Division
Permitting/Production, P-5 Financial Assurance Section
P.O. Box 12967
Austin, TX 78711-2967

P-5LC
rev. 1/2008

IRREVOCABLE DOCUMENTARY BLANKET LETTER OF CREDIT

We hereby establish our Irrevocable Documentary Blanket Letter of Credit in favor of the Railroad Commission of Texas, Austin, Texas for the account of _____ (operator's name), for the aggregate amount of _____ Dollars ($_____) available by your drafts at sight on the bank when drawn in accordance with the terms and accompanied by the documents listed below:

A. This Blanket Letter of Credit is issued in connection with the filing of a P-5 Organization Report (P-5) with the Commission as required by §91.142, Texas Natural Resources Code (TNRC) in order to perform operations within the jurisdiction of the Railroad Commission of Texas, including but not limited to (1) operations listed in the Commission's P-5 Organization Report records (P-5 records) for the operator, and/or (2) wells listed on the Commission's Oil and Gas Proration Schedules (Schedules), and any additional wells that may be obtained prior to the expiration of this Blanket Letter of Credit and carried on the Oil and Gas Proration Schedules. Said P-5 records and Schedules are incorporated herein by reference as if fully set forth at length.

1. Organization Name, exactly as shown on Form P-5 Organization Report.	2. P-5 Number, if assigned.	3. Total # of operator's wells:	Total aggregate depth of all wells:
4. Other Commission-regulated operations. See bond instruction sheet, Paragraph F. [Check appropriate operations; example: operating a pipeline= I] (A) ___ (B) ___ (C) ___ (D) ___ (E) ___ (F) ___ (G) ___ (H) ___ (I) ___ (J) ___ (K) ___ (L) ___	Other operations not included in (A)-(L).		

B. The operator and the issuer of this Blanket Letter of Credit acknowledge and agree that, due to amendments to the Texas Natural Resources Code, amendments to Commission Rules, and/or changes to the operator's Commission-regulated operations, including without limitation the acquisition of additional wells, operator may be required during the effective term of this Blanket Letter of Credit to provide additional financial security beyond the face amount of this Blanket Letter of Credit before its P-5 Organization Report will be accepted and approved.

C. This Blanket Letter of Credit is specifically issued at the request of the operator as guaranty that this fund will be available during the time that the operator is performing Commission-regulated operations. We are not a party to, nor bound by, the terms of any agreement between you and the operator out of which this Blanket Letter of Credit may arise.

D. Drafts drawn under this Blanket Letter of Credit must be accompanied by an affidavit from the Railroad Commission of Texas or an authorized representative, stating that:

1. a well or other oil and gas operation or activity subject to this Letter of Credit is likely to pollute or is polluting any ground or surface water or is allowing uncontrolled escape of formation fluids from the strata in which they were originally located; or

2. a well or other oil and gas operation or activity subject to this Letter of Credit is not being maintained in compliance with Commission rules or state law relating to plugging or the prevention or control of pollution; or

3. a well or other oil and gas operation or activity subject to this Letter of Credit is not polluting any ground or surface water or allowing uncontrolled escape of formation fluids from the strata in which they were originally located, but the operator has failed to maintain current operator status as reflected on the Commission's P-5 records;

AND

4. the draft is in the estimated cost of plugging each well (an amount otherwise impossible to determine as to the exact amount but which is estimated by multiplying the total depth by $2.50 per foot), closing any other operation or activity or controlling, abating, or cleaning up pollution.

We will be entitled to rely upon the statements contained in the affidavit and will have no obligation to independently verify any statements contained therein.

(over)

Each draft hereunder must be endorsed on the reverse side of this Blanket Letter of Credit, and this Blanket Letter of Credit must be attached to the last draft when the credit has been exhausted. Drafts may be presented at the office of this bank no later than 2:00 p.m. (local time) on _____ , 20 ___ (date must be 90 days after the operator's P-5 expiration date), and bear the clause "Drawn under the _____ (Bank name), Bank Letter of Credit No. _____ , dated _____."

We hereby engage with the bona fide holders of this draft and/or documents presented under and in compliance with the terms of this Blanket Letter of Credit that such draft and/or documents will be duly honored upon presentation to us.

Our obligations hereunder shall not be subject to any claim or defense by reason of the invalidity, illegality, or unenforceability of any of the agreements upon which this Blanket Letter of Credit is based. This Documentary Blanket Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits" (2007 Revision) fixed by the International Chamber of Commerce (Publication #600), when not in conflict with the express terms hereof or with the provisions of Article Five of the Texas Business and Commerce Code.

Bank Name: _____

By: _____

(Name): _____

(Title): _____

(seal)

ATTEST:

( ) _____
Tel: Area Code Number

Address of Bank:

_____ _____
Assistant Cashier or Cashier

_____ _____
Date: month day year

☐ New

☐ Amended
Existing Permit No. _____

Effective Month/Year of Requested Exception: _____ / _____

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

APPLICATION FOR EXCEPTION TO STATEWIDE RULES (SWR) 26 AND/OR 27

FORM P-17
Eff 01/2008
$150 FILING FEE

District _____

County _____

SECTION 1. OPERATOR INFORMATION (See instructions under "Who Files")

Operator Name (as shown on P-5): _____ Operator P-5 No. _____

Operator Address: _____ City, State, Zip: _____

SECTION 2. GATHERER (of oil or condensate) INFORMATION (not required if 3b is checked)

Gatherer Name (as shown on P-5): _____ Gatherer P-5 No. _____

Gatherer Address: _____ City, State, Zip: _____

Gatherer E-mail Address: _____
(Optional – If provided, e-mail address will become part of this public record.)

SECTION 3. APPLICATION APPLIES TO (*CHECK ALL THAT APPLY*): ☐ OIL ☐ CASINGHEAD GAS ☐ GAS WELL GAS ☐ CONDENSATE

a. ☐ Gas well full well stream into common separation and storage facility with liquids reported on Form PR.
b. ☐ Gas well full well stream into a gasoline plant/common separation and storage facility with liquids reported on Form R-3 Serial #_____ (If full well stream is checked, the results of periodic tests to determine the number of stock tank barrels of liquid hydrocarbons recovered per 1,000 standard cubic feet of gas must be reported on Form G-10 in accordance with SWR 55. Attach an explanation of any exceptions to SWR 55.)
c. ☐ Condensate and low-pressure Gas Well Gas are commingled into low-pressure separation and storage facilities.
d. ☐ This request is for off lease: ☐ storage ☐ separation ☐ metering.
e. ☐ This exception is for common storage.
f. ☐ This exception is for common separation.
g. ☐ This exception is for casinghead gas metering by: ☐ deduct metering ☐ allocation by well test ☐ other_____.
h. ☐ This exception is for gas well gas metering by: ☐ deduct metering ☐ allocation by well test ☐ other_____.
i. ☐ This request is an exception to measure liquid with a: *(check one below)*
☐ a Turbine Meter or ☐ a Coriolis Meter (an additional $150.00 and a letter of explanation is required for each exception.)

SECTION 4. NOTICE REQUIREMENTS AND ALLOCATION METHOD. ***(CHECK ALL THAT APPLY)*** The following questions determine if 21-day notice is required and applies to all wells proposed for commingling:

a. ☐ The production is measured separately from all leases or individual wells before commingling. *(Notice not required; Skip to Section 5)*
b. ☐ The royalty interests and working interests are the same with respect to identity and percentage. *(Notice not required)*
c. ☐ The royalty interests and working interests are not the same with respect to identity and percentage. *(Notice required)*
If b. or c. checked, production will be allocated by: ☐ W-10 (oil) ☐ W-2 retest (oil) ☐ PD Meter (oil & condensate) ☐ G-10 (gas)
d. ☐ The wells produce from multiple reservoirs. *(Notice required unless 4e. or 4f. apply; see instructions for additional requirements)*
e. ☐ The wells produce from multiple reservoirs and have SWR10 exceptions. *(Notice not required)*
f. ☐ The wells produce from multiple reservoirs and are measured separately from each reservoir. *(Notice not required)*
g. ☐ Any one of the wells proposed for commingling produces from a Commission-designated reservoir for which special field rules have been adopted. *(Notice required)*

SECTION 5. ☐ **Wells proposed for commingling have an operator's name other than the applicant listed in SECTION 1.** *(See instructions)*

SECTION 6. ☐ **For oil production, the production from all oil wells on each oil lease is to be commingled.** *(See instructions)*

SECTION 7. IDENTIFY LEASES AS SHOWN ON COMMISSION RECORDS (attach additional pages as needed)

DISTRICT	RRC IDENTIFIER	ACTION	LEASE AND FIELD NAME	WELL NO.
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		

ATTACH ADDITIONAL PAGES AS NEEDED. ☐ No additional pages ☐ Additional pages _____ (# of additional pages)

CERTIFICATE: I declare under penalties in Sec. 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to be the best of my knowledge. I certify that all requests for related required approvals from other affected State Agencies have been submitted and that I understand that any authorization granted by Commission approval of this application is contingent upon the approvals from other affected State Agencies being obtained.

Signature_____ **Title**_____ **Date**_____
Operator E-mail Address: _____ Operator Phone No. _____
(Optional – If provided, e-mail address will become part of this public record.)

RRC USE ONLY

Commingling Permit No. _____ **Approval date:** _____ **Approved by:** _____

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

FORM P-17 ATTACHMENT

ATTACHMENT FOR
APPLICATION FOR EXCEPTION TO
STATEWIDE RULES (SWR) 26 AND/OR 27

SECTION 7. (CONT'D) IDENTIFY LEASES AS SHOWN ON COMMISSION RECORDS (attach additional pages as needed)

DISTRICT	RRC IDENTIFIER	ACTION	LEASE AND FIELD NAME	WELL NO.
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		

FORM P-17 INSTRUCTIONS

REFERENCE: STATEWIDE RULES 26, 27, 55, 71
EFF 01/2008

REVIEW AND BECOME FAMILIAR WITH SWR 26 AND SWR 27 BEFORE FILING FORM P-17.
FOR ADDITIONAL INSTRUCTIONS PLEASE CONSULT
THE PERMITTING & PRODUCTION SERVICES FILING PROCEDURES MANUAL.

GENERAL

WHEN TO FILE. Oil/condensate and natural gas production must be measured prior to leaving the lease and/or custody transfer. Liquid production from each lease/gas well must be placed in a separate stock tank if stored on the lease prior to custody transfer. An exception to individual lease/gas well metering and storage may be requested by filing Form P-17 with supporting documentation as required.

WHO FILES. An operator of oil and gas production under authority of the Commission P-5 who is responsible for compliance with statewide Rules 26, 27, and/or 55 files Form P-17 in accordance with these instructions.

COMPLIANCE. In order to file a Form P-17, the applicant must have on file with the Railroad Commission (RRC) a current P-5 Organization Report and financial assurance (if required) and must be in compliance with all RRC rules and orders. The applicant must be the operator of the commingled facility as shown in SECTION 1 on Form P-17.

WHERE AND WHAT TO FILE. File the original and two copies of Form P-17 and any required attachments and fees with the Railroad Commission by hand delivery or mail to the following address: Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967.

FEES. A **filing fee of $150 is required** with each Form P-17, unless the only purpose for filing Form P-17 is to delete a lease(s) or well(s) from an existing commingling permit. An additional $150 filing fee is required for each request of an exception to meter oil or condensate with a **Turbine meter or Coriolis meter**. Fees are non-refundable. Make checks or money orders payable to "Railroad Commission of Texas." The Commission also accepts payment by credit card. For information about payment by credit card, see http://www.rrc.state.tx.us/other-information/crcard.html.

PURPOSE OF FILING. File Form P-17 as provided for in Statewide Rules 26, 27 and 55 for the following:

(1) surface commingling of liquid hydrocarbon (oil, condensate or a combination of oil and condensate) production into a common facility OR surface commingling of liquid hydrocarbons and gas production into a common facility with liquids reported on Form PR (these are the only commingling situations in which a permit number will be assigned for reporting on Form-PR, Production Report);

(2) production of gas wells full well stream to a plant/common facility with liquids reported on Form R-3;

(3) gas metering exceptions;

(4) off-lease separation/storage/metering.

(5) amending an existing surface commingling permit (complete SECTIONS 1 through 6 of Form P-17).

File Form P-17 to amend an existing surface commingling approval if a lease consolidation, unitization, field transfer, or work-over/re-completion of a surface commingled lease/gas well occurs. In addition, stock on hand must be transferred on the Form PR.

IMPORTANT TERMS

Common separation and storage: production from two or more leases or wells is combined into one separating device/facility with the liquids placed in common storage.

Common storage only: when each commingled lease or well has a separating device and the liquids are stored in a common tank after individual separation.

Deduct Metering: a method of allocating production to a non-metered gas well by subtracting other individually measured well volumes from the total measured gas volume.

District and County (top, right-hand corner): the Railroad Commission District and County where the commingling facility is physically located.

Effective Month/Year of Requested Exception (top, left-hand corner): the initial month of surface commingling (or amendment/change effective month) and the reporting of commingled production on a combined report. The "effective Month/Year" is the month that commingling actually begins.

Effective month of deletion: When a lease/well becomes inactive and must be deleted from a permit, all stock on hand must be disposed of before filing an amended Form P-17 to delete the lease/well. The effective month of deletion should be the month following the month of the last disposition of production. When discontinuing the operating and reporting of facilities, the Commission and the gatherer must be notified of the effective month of permit cancellation.

Location plat: a plat that shows the location of all leases involved in the application. A location plat is required with a Form P-17 for (1) off lease storage of oil or condensate or (2) off lease metering of gas or liquids. The location plat should show the approximate location of L.A.C.T. units, meters, tank batteries, and any other separation, metering, or storage facilities involved in the surface commingling application.

Off-Lease: A location or lease not listed in this application.

RRC Identifier: all existing or new oil lease numbers, gas identification numbers, or drilling permit numbers as applicable on Form P-17.

INSTRUCTIONS FOR SECTION 3. REQUEST TO COMMINGLE

BOX 3.a. When **producing a gas well full well stream into a common facility with condensate reported on Form PR**, the Form P-4 should show both a gas gatherer and a condensate gatherer. A commingling permit number will be assigned and must be reported on Form PR for the individual wells.

BOX 3.b. When **producing a gas well full well stream to a gasoline plant or common facility where condensate is reported on Form R-3**, the Form PR for the well should show only the full well stream gas production volume and no condensate. The Form P-4 should designate a "full well stream" gatherer but no condensate gatherers. The commingling occurs at the facility reported on Form R-3, Monthly Report for Gas Processing Plants. A permit number is not issued for this type of commingling and is not reported on the Form-PR.

BOX 3.d. When requesting **off lease separation and/or storage of liquids or off lease metering**, show only the lease requesting off lease authority on the Form P-17 and attach a location plat showing the location of the facilities. Do not list the lease on which the facilities are to be located.

INSTRUCTIONS FOR SECTION 4. NOTICE REQUIREMENTS AND ALLOCATION METHOD

Notice of application (NOA) is NOT required if you check any one of BOXES **4.a, 4.b, 4.e or 4.f.**

Notice of Application (NOA) IS required if you check BOX 4.c. If the royalty and working interest owners of all leases producing into the common separation and/or storage facility are not the same and you do not meter before commingling, you must provide a 21-day notice of this application to, or waivers of objection from, the royalty and working interest owners in accordance with SWR 26(b)(1)(C).

In addition, if you DO NOT check BOX 4.a., you must indicate the method of allocation of production in accordance with SWR 26(b)(3). ATTACH to this FORM P-17 a diagram/schematic that shows all meters, separators, and other production equipment where production from each well is separated, metered, and/or commingled.

ADDITIONAL notice of application (NOA) IS required if you check BOX 4.d. and/or 4.g., but do NOT check BOXES 4.e, & 4.f. If the wells proposed for commingling produce from multiple reservoirs or any one of the wells proposed for commingling produces from a Commission-designated reservoir for which special field rules have been adopted, you must provide additional notice of the application **to all offset operators** of adjacent tracts having one or more wells producing from the same reservoirs (SWR 26(b)(4). ATTACH to this Form P-17 an Affidavit stating that notice of the application was sent by certified mail or that waivers of objection were received.

INSTRUCTIONS FOR SECTION 5 NAME OF WELL OPERATOR.
Check the BOX in SECTION 5 if the operator of any well proposed for commingling is different from the operator listed in SECTION 1 of the Form P-17. If you check this box, ATTACH a listing of the name of each **"other" operator** and Form P-5 operator number and, for each operator, all the information required under SECTION 7 of the Form P-17.

INSTRUCTIONS FOR SECTION 6 PRODUCTION OF ALL OIL WELLS TO BE COMMINGLED.
CHECK the box in SECTION 6 if **all producing wells listed** under all specific oil lease numbers on the proration schedule for the effective month are **being commingled** under this application. If this box is checked, individual well numbers for each oil lease number listed under SECTION 7 do not need to be listed. DO NOT CHECK the box in SECTION 6 if production from only some of the wells under any oil lease number is commingled under this application.

INSTRUCTIONS FOR SECTION 7 LEASES SHOWN ON PRORATION SCHEDULE.
DISTRICT: Indicate the Commission district associated with the RRC identifier.

RRC IDENTIFIER: For new applications, list each RRC oil lease or gas ID number to be surface commingled. If the lease or ID number has not yet been assigned, list the drilling permit number of the wells proposed for commingling. If more space is needed, complete the list of leases on an additional page and attach it to Form P-17.

ACTION: List all existing leases or wells and all wells that are being added to or deleted from the permit and check the appropriate box to indicate the action.

LEASE NAME: Indicate the name of the lease. If the lease identifier is pending, also provide the field name.

WELL NO.: When only part of the wells on a given oil lease are commingled, list the individual well numbers to be commingled in the "Well No." column. If the wells exceed the space provided, ATTACH a list to the Form P-17. It is not necessary to list the gas well numbers because gas leases only have one well. If all of the wells of an oil lease are being included, the word "all" can be inserted in the "Well No." column as opposed to listing each well.

COMMISSION APPROVAL OF FORM P-17:

Upon approval of the Form P-17, the Railroad Commission will mail an approved copy to both the applicant and the gatherer.

Any exception to Statewide Rule 26 or 27 granted by the Railroad Commission through the approval of a Form P-17 is contingent on the applicant obtaining all related required approvals from other affected State Agencies.

In addition, if a protest is registered with the Railroad Commission concerning the installation and/or operation of the facilities approved at any time following approval, the exception to SWR 26 and/or 27 shall be subject to cancellation by the Railroad Commission if, after due notice and hearing, cancellation is justified.

Issued in Austin, Texas on December 18, 2007.

TRD-200706526
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: December 20, 2007

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Texas Department of Transportation

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (department) publishes this notice of a consultant contract award for providing Maintenance Division Compass Project support services. The request for proposal for Maintenance Division Compass Project (Compass Project) support services was published in the *Texas Register* on June 29, 2007 (32 TexReg 4106).

The consultant will support the department during the pre-procurement and post-procurement phases and will provide expertise, advice, and recommendations to the project management team. The consultant will advise on vendor evaluation, assist with project plan monitoring, help clarify requirements and work with project focus groups through the business process definition. The consultant will provide assistance to the department and the project management team throughout the life cycle of the Compass Project.

The selected consultant for these services is Dye Management Group, Inc., City Center Bellevue, Suite 1700, 500 108th Avenue NE, Bellevue, WA 98004. The total value of the contract is $2,172,040 and the contract work period started on December 19, 2007, and will continue until March 31, 2011.

TRD-200706537
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 20, 2007

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200706536
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 20, 2007

♦ ♦ ♦

University of North Texas System

Notice of Request for Information for Outside Legal Services Related to Immigration Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing one of its component institutions, the University of North Texas (UNT), in certain immigration matters. This Request for Information (RFI) is issued for the purpose of establishing (for the time frame beginning January 31, 2007 to August 31, 2008) a referral list from which UNT, by and through the UNT System Office of General Counsel, will select counsel for representation on specific immigration matters as the need arises, including labor certification for employees petitioning for permanent residency status.

Description. The UNT System is comprised of one health institution and two academic institutions located in three cities in Texas. Legal services will be provided primarily for employees at the University of North Texas, which is located in Denton, Texas. UNT is a major research university that employs faculty and staff from around the world in its College of Arts and Sciences, College of Business Administration, College of Education, College of Engineering, College of Music, College of Public Affairs and Community Service, School of Library and Information Sciences, School of Merchandising and Hospitality Management, College of Visual Arts and Design and in other academic and administrative units. There are circumstances when the hiring of foreign nationals to work at UNT is impacted by U.S. immigration laws. Subject to approval by the Texas Attorney General, the UNT System will engage outside legal counsel to provide legal services and advice to the UNT on immigration law matters pertaining to the hiring and employment of aliens and related immigration law matters. This legal counsel and advice may include, but not be limited to, the following immigration related areas: petitioning for nonimmigrant visas and employer-sponsored permanent residency; representation before the Department of Labor including labor condition applications; labor certifications Program Electronic Review Management (PERM); complying with SEVIS requirements; and providing counsel on the impact of homeland security issues on immigration law. Additionally, this legal counsel will include interaction with and representation before applicable federal agencies, including the Department of Homeland Security and the Department of Labor, and interaction with the UNT System Office of General Counsel and the UNT human resources office. Attorneys in the law firm should be admitted to practice before Texas United States District Courts.

The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services set out above, including the firm's prior experience in handling such immigration issues specific to hiring foreign faculty and staff at a research university and permanent residency, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) fee information (either in the form of hourly rates for each attorney and paralegal/legal assistant who may be assigned to perform services in relation to UNT's immigration law matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNT and the Attorney General of the State of Texas. Responses should provide specific information concerning the law firm's willingness to provide legal services for labor certification on a flat-fee basis, including the flat fee it will charge.

Format and Person to Contact. Responses should be sent by mail, facsimile, or electronic mail, marked "Response to Request for Information--Immigration Matters" and addressed to Cheryl Finley, Office of General Counsel, The University of North Texas System, P.O. Box 310907, Denton, Texas 76203; CFinley@pres.admin.unt.edu. If responding by mail, two copies of the response are requested. The response should be typed, preferably double-spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. Questions may be directed to Ms. Finley by telephone at (940) 565-2717.

Deadline for Submission of Response. All responses must be received by the UNT System Office of General Counsel at the address set forth above not later than 5:00 p.m., January 25, 2008.

TRD-200706510
Joey Saxon
Director of Purchasing and Payment Services
University of North Texas System
Filed: December 19, 2007

♦ ♦ ♦

Texas A&M University System Board of Regents

Award of Request for Proposal

RFP 07-0022 Heat and Power Generation Financial Analysis

Awarded Firm: Burns & McDonnell

9400 Ward Parkway

Kansas City, Missouri 64114

Description of activities: Firm shall conduct a financial analysis in conjunction with an engineering analysis (by others) to compare the viability, cost and risk associated with various options to generate and/or procure electrical power and thermal energy at Texas A&M University in College Station. The project deliverables shall include an audit report to be followed with presentations of the results. The report shall verify the accuracy of the data provided by the engineering firm and the assumptions made.

Not-to-Exceed Cost: $120,100

Contract Period: December 18, 2007 through October 31, 2008

TRD-200706527
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: December 20, 2007

♦ ♦ ♦

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Kermit, 110 South Tornillo Street, Kermit, Texas 79745, received 12/7/2006, application for financial assistance in the amount of $4,595,000 from the Clean Water State Revolving Fund.

City of Greenville, PO Box 1049, Greenville, Texas 75403, received 9/1/2007, application for financial assistance in the amount of $20,000,000 from the Clean Water State Revolving Fund.

Trinity River Authority- Red Oak Creek Regional Wastewater Treatment, 5300 South Collins Street, Arlington, Texas 76018, received 8/15/07, application for financial assistance in the amount of $21,580,000 from the Clean Water State Revolving Fund.

City of Donna, 307 S 12th Street, Donna, Texas 78537, received 7/2/07, application for financial assistance in the amount of $956,000 from the Economically Distressed Areas Program.

Salado Water Supply Corporation, P.O. Box 128, Salado, Texas 76571, received 8/30/07, application for financial assistance in the amount of $2,940,000 from the Rural Water Assistance Fund.

La Joya WSC, PO Box A, La Joya, Texas 78560, received 11/20/07, application for financial assistance in the amount of $2,500,000 from the Rural Water Assistance Fund.

Harris County WCID #36, 903 Hollywood, Houston, Texas 77015, received 9/24/07, an application for financial assistance in the amount of $5,000,000 from the Clean Water State Revolving Fund.

Trinity River Authority- Mountain Creek Regional Wastewater Treatment System, 5300 South Collins Street, Arlington, Texas 76018, received 8/15/07, an application for financial assistance in the amount of $7,435,000 from the Clean Water State Revolving Fund and a loan in the amount of $325,000 from the Texas Water Development Fund.

City of Houston, 901 Bagby, Houston, Texas 77002, received 10/8/01, an application for financial assistance in the amount of $37,905,000 from the Clean Water State Revolving Fund.

Moore Water Supply Corporation, PO Box 126, Moore, Texas 78057, received 9/4/07, application for financial assistance in the amount of $250,000 grant/loan from the Economically Distressed Areas Program.

TRD-200706598
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Filed: December 21, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).